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Research

Social Finance

Leveraging Crypto Assets in India

February 2022

In collaboration with



Research

Social Finance

Leveraging Crypto Assets in India

February 2022

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Executive summary

Social finance generally refers to the intentional allocation of capital primarily towards the achievement of specific social objectives, sometimes with a financial return. Such forms of financing include donations, government grants, blended finance, impact investments and a wide range of risk and return models that range from 100% loss of capital to above market returns.

In recent times, the reduction in overall availability of philanthropic capital and the continuous pressure towards efficient use of limited funds has driven this space to explore innovative ways of deploying the available limited funds. The industry has relied on leveraging newer technologies and has explored a few innovative financial instruments in the search for maximizing impact or the efficiency in achieving outcomes.

However, certain novel global practices in this space including the leveraging of fintech and emergent technologies to increase the ease and impact of philanthropic work, along with decrease in costs have not yet been explored in India for a myriad of reasons including legal uncertainty.

Globally, there are successful projects by UNICEF and the World Food Programme that showcase some of the best ways in which crypto assets may be leveraged. Even in the Indian context, over USD 1 Billion were crowdsourced through collection and pooling of crypto assets, creating a rapid response fund, that was routed into India toward COVID-19 relief. However, direct donations in form of crypto assets is not yet seen as a popular means of social finance in India. The current Indian policy mindset appears to be that while blockchain is a useful technology, crypto assets are not something to be promoted, which may not factor the potential for positive use cases of crypto assets. This paper is futuristic in this sense and dives into global use cases wherein crypto payments have been leveraged in the social finance space.

While the Indian Government has recently announced a regime for taxation of virtual digital assets, on the regulatory front, the nature and classification of VDAs is still in limbo. Keeping in mind that no technology is inherently good or bad and that it can be used to create both a positive or a negative impact on society, this paper intends to showcase the potential for positive use cases of crypto assets in the Indian social finance or philanthropic space based on successful use cases globally. The paper will analyze the various laws that would potentially apply if the successful global use cases were sought to be replicated in the Indian social finance space. The paper would also make policy recommendations regarding the changes required to the current legal framework to make it a favourable ecosystem that enables activities that benefit those whose need it the most in India.

1. Introduction to Social Finance

The focus of this paper lies at the intersection between social finance and crypto assets. In this chapter, we first look at the concept of social finance, followed by a brief introduction to crypto assets before we analyse successful global use cases where crypto assets have been leveraged towards impactful objectives within the domain of social finance.

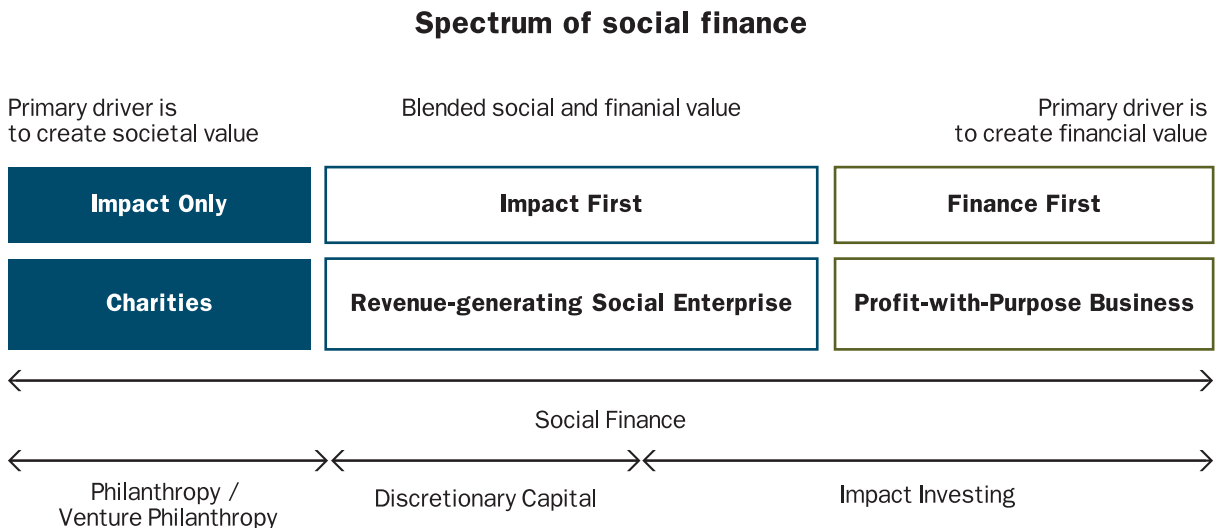
I. What is social finance?

Social finance refers to the deployment of financial resources primarily for social and environmental returns, as well as in some cases, a financial return.¹ Certain sections also refer to social finance as ‘three-dimensional capital’— capital allocated according to conventional, financial, risk and return criteria plus optimizing a given social or environmental return.² Social finance not only provides investors with additional avenues to finance projects that seek to create a positive societal impact but also grants social ventures the ability to access funds from new sources.³

Consensus on the formal definition of social finance is yet to be developed due to lack of clarity around its scope and intent,⁴ however, it is said to include elements of impact investing, socially responsible investing and social enterprise lending.⁵ Even though that there are differences among different researchers about what social finance represents, the innovative use and combination of resources to pursue opportunities to catalyze social change is common amongst most researchers.⁶ Social finance can be better understood through a spectrum, which is illustrated by the following diagram:

1. Moore, Michele-Lee & Westley, Frances & Nicholls, Alex. (2012). The Social Finance and Social Innovation Nexus 1. Journal of Social Entrepreneurship. 3. 115-132. 10.1080/19420676.2012.725824.
2. Alex Nicholls, Rob Patan and Jed Emerson, Social Finance, 1st edn, OUP 2015
3. Harnessing the Power of Social Finance: Canadians Respond to National Call for Concepts for Social Finance, A Report of the Government of Canada, May 2013. Available at - <https://www.canada.ca/en/employment-social-development/programs/social-finance/consultations-report.html>
4. Rexhepi, Gadaf. (2017). THE ARCHITECTURE OF SOCIAL FINANCE. Available at: https://www.researchgate.net/publication/312593785_THE_ARCHITECTURE_OF_SOCIAL_FINANCE
5. Höchstädter, Anna Katharina; Scheck, Barbara (2014-08-26). "What's in a Name: An Analysis of Impact Investing Understandings by Academics and Practitioners". Journal of Business Ethics. 132 (2): 449-475
6. Rexhepi, Gadaf. (2017). THE ARCHITECTURE OF SOCIAL FINANCE. Available at: https://www.researchgate.net/publication/312593785_THE_ARCHITECTURE_OF_SOCIAL_FINANCE

1. Introduction to Social Finance



Source: Alex Nicholls, Rob Paton and Jed Emerson, Social Finance, 1st edn OUP 2015, 7

II. Growth of social finance

Participants in the field of social finance include “impact-first” investors who prioritize generating social impact and “financial-first” investors who primarily seek economic return but also have an interest in social impact. The growth of social finance can be attributed to both demand and supply side factors. This is characterized by the need of social organizations to move their reliance beyond the traditional grant funding and increasing number of capital owners seeking to allocate their resources to generate social value as well as financial returns.⁷ Surveys conducted worldwide by financial advisors and other groups indicate that the young generation of millennials, Gen X, baby boomers; who are to inherit approximately \$68 trillion wealth in the coming decades consider environment, social and governance a key factor in making investment decisions.⁸ Further, increasing uncertainties like climate change, steep economic inequality, basic education or health care are amongst several issues which require immediate and collaborative action and have thus paved way for social finance.⁹ Reports and past experience also suggest that the expansion of social finance has also been driven in several countries (like UK) by a proactive policy agenda.¹⁰

Since COVID-19 has had a disproportionate impact on the poor and vulnerable, it may have a long-term impact on the preference of investors and stakeholders for assets which take into consideration environment, social and governance issues.¹¹ Considering current economy situation among these factors, development of social finance becomes need of the hour.

7. Alex Nicholls, Rob Patan and Jed Emerson, Social Finance, 1st edn, OUP 2015

8. **Impact Investing Simplified, A Guide to Making and Receiving Impact Investments in India**, July 2019 available at: <https://www.trust.org/contentAsset/raw-data/ac41fcc1-d161-4b62-b64b-fc92e310397f/file>

9. **Impact Investing Simplified, A Guide to Making and Receiving Impact Investments in India**, July 2019 available at: <https://www.trust.org/contentAsset/raw-data/ac41fcc1-d161-4b62-b64b-fc92e310397f/file>

10. Alex Nicholls, Rob Patan and Jed Emerson, Social Finance, 1st edn, OUP 2015

11. Shu Tian, Donghyun Park, Mai Lin C. Villaruel, **What is Driving the Growth of Green and Social Finance**, 21st May 2021, available at: <https://blogs.adb.org/blog/what-is-driving-growth-green-and-social-finance>

III. Challenges in social finance space

In recent times, the social finance sector has faced several challenges due to reductions in the amount of funds coming through philanthropic capital and development finance. Falling public-sector budgets have resulted in limitations on the traditional financing means of government grants. Private sector entities which are stakeholders in the field of social finance have realized the aforementioned challenges and have established newer financial models which enable payment for performance and focus more on tying payments to actual measurable social impact. These challenges have led to the creation of new financial instruments (few illustrated in the table below) and partnerships between public sector entities, private sector entities.¹²

New Forms of Social Finance		
OUTCOME FUNDING	BLENDED FINANCE	IMPACT BONDS
<ul style="list-style-type: none"> ■ Payment only on achievement of outcomes ■ Cost Savings for Outcome Funder ■ Efficiency gains due to better tracking and metrics 	<ul style="list-style-type: none"> ■ Involves leveraging grant capital to crowd in commercial capital ■ Used to de-risk investments through first loss guarantee to attract commercial capital ■ Increases capital available towards developmental goals 	<ul style="list-style-type: none"> ■ Risk transference to Risk Investor ■ Payment only on achievement of outcomes ■ Cost Savings for Outcomes Funder ■ Efficiency gains due to better tracking and metrics

Despite the increased interest among institutional investors, securing commitment from traditional investors continues to be a challenge.¹³ Some social finance products have longer durations and maturities, leading to higher risk and limited or no liquidity, especially among impact investments. A lack of services to facilitate connections between investors and verifiable projects and investees necessitates greater due diligence on the part of investors, which increases transaction costs.¹⁴

Another challenge is the need to understand how to measure results and to overcome this challenge, improved metrics for measuring social impact is necessary. But social benefits are subjective and therefore difficult to value, measure and compare. In addition, the process of tracking and measuring these returns can be costly in terms of time and resources.¹⁵

In addition, there are certain challenges where technology may be leveraged to provide solutions. Transparency and demonstrated results are needed for the credibility and further growth of the social finance sector.¹⁶ An additional concern arises with respect to the traceability and end-use of the funds, which can be difficult with traditional finance as the party's visibility over downstream activity decreases with increasing exchanges of funds. Further, there are significant transaction costs associated with social finance, such as the processing charges on international transfers of capital, the tracking and measurement costs, and the hidden cost of decreasing value of the commitment due to inflation over the years. Such costs might disincentivize deployment of capital.¹⁷

12. Sonal Shah & Kristina Costa, *Social Finance: A Primer (Understanding Innovation Funds, Impact Bonds, and Impact Investing)*, Center for American Progress, 5th November, 2013. Available at - www.americanprogress.org/issues/economy/reports/2013/11/05/78792/social-finance-a-primer/

13. Moore, Michele-Lee & Westley, Frances & Nicholls, Alex, *The Social Finance and Social Innovation Nexus*, Vol, 1, Journal of Social Entrepreneurship, pg. 115-116, (2012).

14. BNY Mellon, *Conditions for Scaling Investment in Social Finance*, September 2015. Available at - https://www.bnymellonwealth.com/assets/img/vision/bsr_conditions_for_scaling_social_finance_2015.pdf

15. Alex Nicholls, Rob Paton and Jed Emerson, *Social Finance*, pg. 100-101, 1st edn, OUP 2015.

16. EMCompass, *Beyond fintech: Leveraging Blockchain for More Sustainable and inclusive supply chains*, September 2017 available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/30371/1/20260-BRI-PUBLIC-EM-Compass-Note-45-final.pdf?sequence=1&isAllowed=y>

17. Alex Nicholls, Rob Paton and Jed Emerson, *Social Finance*, pg. 151-152, 1st edn, OUP 2015.

IV. Emerging trends in social finance: Looking Towards Technological Solutions

Apart from innovative financial instruments, technological innovations have also seen extensive use in achieving social finance space. Most notably, artificial intelligence (“AI”) has been successfully deployed to generate positive impact in sectors ranging from crisis management to economic challenges to environmental issues. AI has also seen considerable success in attempting to address challenges of diversity, inclusion, equality and self-determination.¹⁸ Machine learning is another recent technological innovation that has seen considerable success in the social space. By enabling the examination and analysis of large data sets in an expeditious manner, machine learning helps in addressing two central problems in the social sector. Firstly, machine learning helps in predicting the occurrence and nature of problems and subsequently enables rapid and effective action to be taken, Secondly, machine learning provides important stakeholders and service providers with the necessary data that they require to provide more direct and focused impact. The provision of necessary data also facilitates greater efficiency in delivering impact while simultaneously helping in reducing operating costs.¹⁹

Leveraging emergent technologies such as cryptocurrency and blockchain technology may also help overcome some challenges faced by the social finance space. Crypto-assets have lesser transaction costs and blockchain technology enables the funders to trace the ultimate use of their cryptocurrency contribution, while also protecting the privacy of their beneficiaries (as will be demonstrated with case studies in Section 3 of this paper). Emerging technologies hold great potential to alleviate the major challenges that are faced by participants in the social finance sector. For instance, the benefits of FinTech business models and blockchain technology in development finance, along with the general benefits of digitalization have been recognized by the United Nations Task Force on Financing for Development.²⁰ There are several projects wherein blockchain technology has been adopted to help in identity management,²¹ financial access²² and public services²³. Application of blockchain can help create social impact by bringing in benefits of improved effectiveness, efficiency and marketplace facilitation in a manner that is easily replicable and scalable.²⁴

18. Michael Chui, Martin Harrysson, James Manyika, Roger Roberts, Rita Chung, Pieter Nel, and Ashley van Heteren, **Applying artificial Intelligence for social good**, A Discussion Paper by the McKinsey Global Institute, December 2018. Available at - <https://www.mckinsey.com/-/media/mckinsey/featured%20insights/artificial%20intelligence/applying%20artificial%20intelligence%20for%20social%20good/mgi-applying-ai-for-social-good-discussion-paper-dec-2018.pdf>

19. Ben Brockman, Andrew Fraker, Jeff McManus & Neil Buddy Shah, **Can Machine Learning Double Your Social Impact?**, Stanford Social Innovation Review, 20th February, 2019. Available at - https://ssir.org/articles/entry/can_machine_learning_double_your_social_impact

20. Interagency Task Force on Financing for Development, **New technologies and financing for development**. Available at <https://developmentfinance.un.org/new-technologies-and-financing-development>

21. Microsoft and Rockefeller Foundation’s ID2020 project is using blockchain, biometrics and credentials issued from various institutions to create a digital identity for people living without a proper ID; Canada’s Hypergive uses a blockchain-based food wallet for the poor to combat racketeering.

22. Spain’s EthicHub used blockchain smart contracts to create a peer-to-peer crowdfunding marketplace for farm workers where they can invest surplus funds and get access to affordable credit; WeTrust in the USA uses blockchain in its alternative financial platform for collaborative savings, lending, and insurance, thus enabling financial inclusion whilst ensuring more capital remains with users

23. Kenya introduced a blockchain-based bond to mobilize micro-savings to finance the government, with many savers being first-time investors in government securities; Bank of East Asia’s Blue Cross uses blockchain to speed up the processing of health insurance claims

24. Globally, ~1 billion are estimated living without a proper ID, and ~2.5 billion still unable to access basic services like a bank account. <https://www.bbvaopenmind.com/en/economy/global-economy/blockchain-innovations-for-social-impact-at-scale/>

2. Blockchain Technology and Crypto Assets

The term crypto-asset generally refers to an intangible digital asset which is issued and exchanged through cryptographic technology.²⁵ Crypto currencies like Bitcoin and Ethereum are prominent examples of crypto assets. Crypto-assets are shared electronically through a distributed ledger, which is a database containing records of issuance and transfer transactions.

Blockchain is a primary example of a distributed ledger whose copies are stored on multiple computers called nodes which form a part of a larger computer network.²⁶ Without crypto assets, the blockchain system is severely inadequate.²⁷ This is because crypto assets encourage and incentivize de-centralization, which is the core purpose of blockchain technology. Providing a crypto asset will incentivize miners i.e. individuals engaged in the process of validating the transactions which form a part of the blockchain and will reasonably limit the amount of a transactions that one person could send.²⁸ Without miners performing the validation function, there is no basis for security and as a result, no basis for de-centralization. If de-centralization cannot be achieved, there is no purpose to implementing blockchain technology.

The following diagram represents three broad categories under which crypto assets can be classified²⁹:

Security tokens	Utility tokens	Payment/exchange/currency tokens
<ul style="list-style-type: none"> Typically provide rights (e.g. in the form of ownership rights and/or entitlements similar to dividends). For example, in the context of capital raising, asset tokens may be issued in the context of an Initial Coin Offering (ICO)/Token Generating Event (TGE) that allows businesses to raise capital for their projects by issuing digital tokens in exchange for fiat money or other crypto-assets. Example: Bitbond. 	<ul style="list-style-type: none"> Typically enable access to a specific product or service often provided using a DLT platform. Can only be used in the issuer's network. Very complex legal structures generally apply to utility tokens. Example: Ether 	<ul style="list-style-type: none"> Often referred to as VCs or crypto-currencies. Typically do not provide rights (as is the case for investment or utility tokens) but are used as a means of exchange (e.g. to enable the buying or selling of a good provided by someone other than the issuer of the token), for speculative purposes or for the storage of value. Example: Bitcoin or Ether 'Stablecoins' are a relatively new form of payment/exchange token that is typically asset-backed (by physical collateral or crypto-assets) or is in the form of an algorithmic stablecoin (with algorithms being used as a way to stabilise volatility in the value of the token).

In recent times, India has seen considerable implementation and development of blockchain technology. As per a report published by Price Waterhouse Coopers, blockchain technology is estimated to contribute nearly USD 62 billion to the Indian economy by 2030.³⁰ In 2018, the Government of Maharashtra entered into a Memorandum of Understanding with the Monetary Authority of Singapore to implement blockchain technology in the FinTech

25. Bartolucci S, Kirilenko A., **A model of the optimal selection of crypto assets**, Royal Society of Open Science. 7: 191863. <http://dx.doi.org/10.1098/rsos.191863>.

26. Bartolucci S, Kirilenko A., **A model of the optimal selection of crypto assets**, Royal Society of Open Science. 7: 191863. <http://dx.doi.org/10.1098/rsos.191863>.

27. Extract of the auto-generated transcript of the video by Andreas Antonopoulos titled '**Bitcoin Q&A: "Blockchain, not Bitcoin"**' available at <https://www.youtube.com/watch?v=r2foHlaRdgo>.

28. Allen Scott, **Vitalik Buterin: Russia's Crypto Ban Would Stifle Blockchains**, **Bitcoin News**, 17th May, 2016. Available at <https://news.bitcoin.com/buterin-ban-russia-stifle-blockchains/>

29. The International Organization of Securities Commissions, **Final Report on Investor Education in Crypto-Assets**, December 2020. Available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD668.pdf>.

30. Annapurni V, **The subdued rise of blockchain in India**, **The Hindu Business Line**, 31st December, 2020. Available at <https://www.thehindubusinessline.com/data-stories/data-focus/the-subdued-rise-of-blockchain-in-india/article33464848.ece>

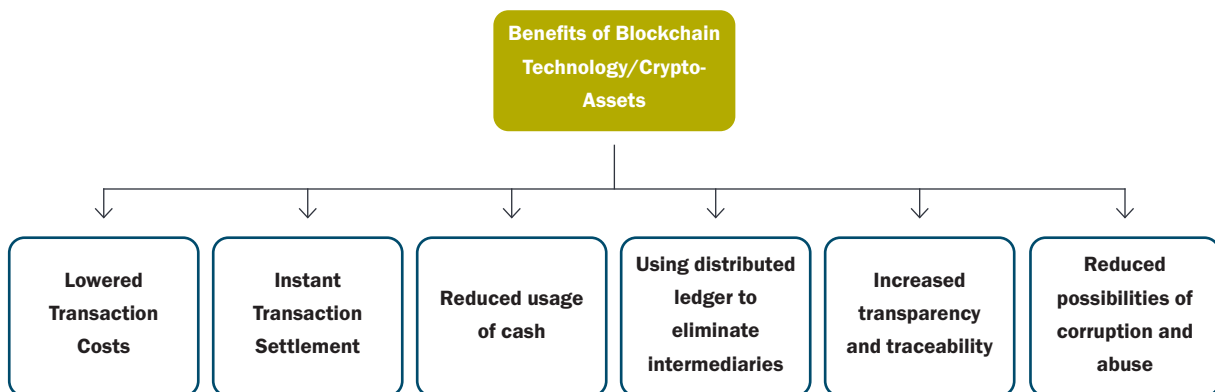
2. Blockchain Technology and Crypto Assets

space.³¹ Subsequently in 2021, the Maharashtra government implemented blockchain technology to digitally verify and prevent fabrication of documents such as diplomas.³² Prominent companies such as Infosys and TCS have also implemented blockchain technology in core banking functions.³³ A coalition of 15 public and private sector banks called the Indian Banks' Blockchain Infrastructure Company Private Limited (IBBIC) has been established to implement blockchain technology to improve efficiency in processing letters of credit, GST invoices and e-way bills. Recently, the Central Board of Indirect Taxes and Customs launched an electronic cargo tracking system in an effort to use blockchain technology to streamline the logistics industry.³⁴

Although India seeks to control cryptocurrencies and may introduce a bill prohibiting certain cryptocurrencies, it has expressed interest in the continued use of blockchain technology.³⁵

I. Benefits of Blockchain/ Crypto-assets

An estimated 20-25% of funds globally are lost to corruption at the government level, intermediaries take up to 7% of remittances, and modern fintech solutions fail to include the 1.7 billion unbanked adults around the globe.³⁶ Use of crypto assets through blockchain technology has been viewed as helping re-establish fairness in the modern economy. The following diagram illustrates some of the benefits offered by implementing blockchain and / or crypto assets³⁷:



By eliminating the need for middlemen or intermediaries, using blockchain technology helps in the reduction of transaction costs. Since there is no centralized authority in a blockchain solution, transaction time is greatly shortened, and transactions can be settled immediately. Any information that is added to the blockchain is done on the basis of

31. Available at <https://www.opengovasia.com/articles/mas-signs-mou-with-state-government-of-maharashtra-in-india-for-fintech-cooperation> (last visited September 14, 2018)

32. **Maharashtra govt warms up to blockchain tech for tamper-proof education certificates**, Times of India. Available at <https://timesofindia.indiatimes.com/spotlight/maharashtra-govt-warms-up-to-blockchain-tech-for-tamper-proof-education-certificates/articleshow/85796401.cms>

33. Available at <http://www.livemint.com/Companies/bXjPtIHZRK46FQVb2hxhyN/TCS-throws-weight-behind-blockchain.html> (last visited September 14, 2018)

34. Mimansa Verma, **The Indian government is testing blockchain technology to streamline its logistics industry**, Quartz India, October 18, 2021. Available at <https://qz.com/india/2075021/india-is-testing-blockchain-technology-for-its-logistics-industry/>

35. Indivjal Dhasmana, **India will not 'shut off' all cryptocurrency, wants blockchain: Sitharaman**, Business Standard, March 15, 2021, Available at https://www.business-standard.com/article/markets/india-will-not-shut-off-all-cryptocurrency-wants-blockchain-sitharaman-121031400754_1.html; See also Centre of Excellence In Blockchain Technology, Adoption of Blockchain Technology in Government, Available at <https://blockchain.gov.in/>.

36. Available at - <https://consensys.net/blockchain-use-cases/>

37. The Report by the Institute for Development and Research in Banking Technology (IDRBT) titled "Applications of Blockchain Technology to Banking and Financial Sector in India" (January 2017). Available at - www.idrbt.ac.in/assets/publications/Best%20Practices/BCT.pdf; Report of the Working Group on FinTech and Digital Banking (set up by the Reserve Bank of India) (November 2017). Available at - rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/WGFR68AA1890D7334D8F8F72CC2399A27F4A.PDF. See also the Report of the "Committee on Digital Payments" constituted by the Ministry of Finance (Watal Committee Report) (December 2016) and <https://consensys.net/blockchain-use-cases/government-and-the-public-sector/>.

2. Blockchain Technology and Crypto Assets

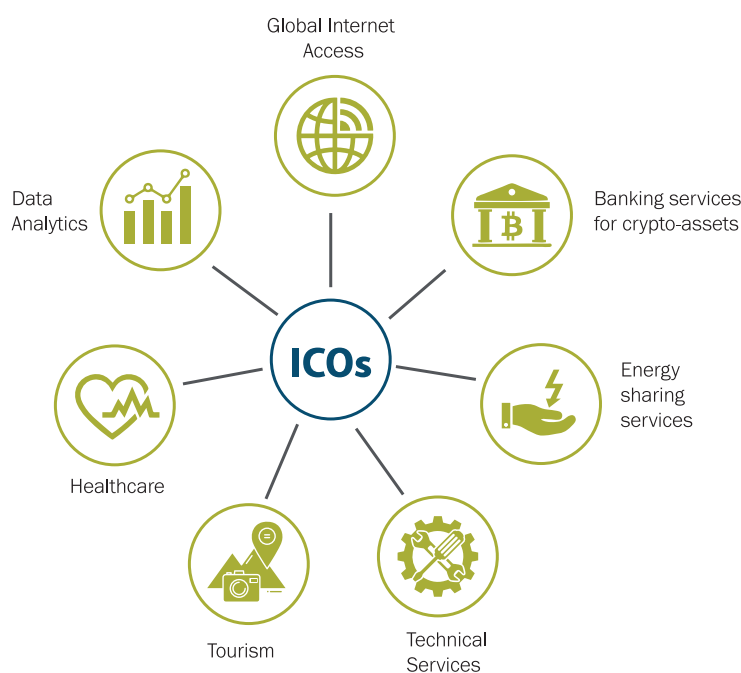
consensus of all parties involved, rather than a single entity. This ensures that every member's point is duly considered and mitigates probability of failure. Further, blockchain maintains a comprehensive record of transactions and facilitates access by any member at any time. This not only ensures greater traceability of funds and safeguards against risks of financial fraud or data manipulation, but also allows for more expeditious and efficient audits as well.³⁸

II. Raising funds using Crypto-assets

In recent times, crypto assets have been used to raise capital and fund ventures through the mechanism of Initial Coin Offering (“ICO”). In an ICO, capital to fund a particular project is received in the form of crypto currency and investors are given crypto assets called tokens in exchange. These tokens are also offered over a blockchain platform and can take the form of utility tokens which give the investors access to certain services, tokens which offer a larger benefit to the community, tokens which can be used as currency to purchase products and services which are developed or investment tokens which enable investors to submit investment decisions.³⁹

The ICO system is also supported by a strong secondary market that enables the direct trade and transfer of such tokens. These secondary markets give investors the option to hold the tokens if they believe in the success of the project or trade them if they seek immediate liquidity.⁴⁰ Examples of such secondary markets include Coinbase, Poloniex, BlockEx and the Digital Asset Exchange.

From early 2018 onwards, around 50 ICOs have raised over USD 1 billion in funding. Further, the top 10 ICOs have raised funds ranging from USD 36 million to USD 100 million.⁴¹ The following diagram represents some of the sectors in which ICOs have been used to raise funds.



38. Akash Takyar, **How Blockchain can revolutionize Social Impact Bonds**, LeewayHertz. Available at - www.leewayhertz.com/blockchain-in-social-impact-bonds/

39. Iris H-Y Chiu and Edward F Greene, **The Marriage of Technology, Markets and Sustainable (and) Social Finance- Insights from ICO Markets for a New Regulatory Framework**. Available at - [https://discovery.ucl.ac.uk/id/eprint/10067499/1/Chiu_The%20Marriage%20of%20Technology,%20Markets%20and%20Sustainable%20\(and\)%20Social%20Finance%20%E2%94%80%20Insights%20from%20ICO%20Markets%20for%20a%20New%20Regulatory%20Framework_AAM.pdf](https://discovery.ucl.ac.uk/id/eprint/10067499/1/Chiu_The%20Marriage%20of%20Technology,%20Markets%20and%20Sustainable%20(and)%20Social%20Finance%20%E2%94%80%20Insights%20from%20ICO%20Markets%20for%20a%20New%20Regulatory%20Framework_AAM.pdf)

40. Iris H-Y Chiu and Edward F Greene, **The Marriage of Technology, Markets and Sustainable (and) Social Finance- Insights from ICO Markets for a New Regulatory Framework**. Available at - [https://discovery.ucl.ac.uk/id/eprint/10067499/1/Chiu_The%20Marriage%20of%20Technology,%20Markets%20and%20Sustainable%20\(and\)%20Social%20Finance%20%E2%94%80%20Insights%20from%20ICO%20Markets%20for%20a%20New%20Regulatory%20Framework_AAM.pdf](https://discovery.ucl.ac.uk/id/eprint/10067499/1/Chiu_The%20Marriage%20of%20Technology,%20Markets%20and%20Sustainable%20(and)%20Social%20Finance%20%E2%94%80%20Insights%20from%20ICO%20Markets%20for%20a%20New%20Regulatory%20Framework_AAM.pdf)

41. Statistics available at <https://www.coinschedule.com/stats.html>.

2. Blockchain Technology and Crypto Assets

Drawing from the success of ICOs, a similar model could potentially be implemented for funding social finance projects. The tokenization process allows entities seeking funding to offer consideration or donations in financial and non-financial forms. While, financial forms of consideration may be comprised of a share in the value created by the project or regular dividend-like payments based on income streams, non-financial forms of consideration can include the aforementioned examples of community benefit tokens, utility tokens and currency tokens which can be used to purchase the issuer's impactful or charitable activities for instance, thereby financing such charitable activity.⁴² Therefore, for investors solely interested in social impact, non-financial tokens such as utility tokens, community benefit tokens and currency tokens that relate to the social activity being conducted may be issued.⁴³

ICOs have been used in the social finance space. Illustratively, in December 2016, Humaniq,⁴⁴ implemented a pre-ICO and offered its own crypto asset – the Humaniq Token (“**HMQ**”). Humaniq Care is a charity and fundraising platform built around this application and blockchain infrastructure. Humaniq is a new generation financial services with its own cryptocurrency, which is aimed at eradicating poverty amongst millions of people living in the emerging economies. The pre-ICO raised around USD 110,000 for the startup. The pre-ICO was followed up with a full-fledged ICO in April 2017 and saw considerable success. Nearly 12,000 people took part in the ICO and on average, each person contributed USD 430. The ICO helped in raising nearly USD 5 million for Humaniq. Bitcoin and Ether were the only means of purchasing HMQ and it was ensured that every participant could purchase at least 1000 HMQ.⁴⁵ According to them, charity, carried out in the traditional way, often leads to a large proportion of donated money falling into the wrong hands. Blockchain technology, combined with the infrastructure of Humaniq, ensures that donations are completely transparent: stakeholders are able to see what every penny is spent on and can be sure that all of their money is going to help people. They also state that one of the other key benefits is zero fee money transfers where the remittances are made through the crypto asset, cutting out the middle man and financial monopolies thereby benefitting the recipients.

Similarly, Impak, a Canada-based independent rating agency developing rating standards in line Canada-based independent rating agency, implemented an ICO where it issued its own crypto asset – Impak Coin. The Impak ICO was the first ICO in Canada to be entirely regulated.⁴⁶ So far, the Impak ICO has raised funds close to USD 1 million and Impak Finance seeks to use these funds to provide capital to other business that aim at generating social impact.⁴⁷

42. Brakman Reiser & Dean, **Social Enterprise Law: Trust, Public Benefit and Capital Markets**, Oxford Scholarship Online, October 2017. Available at <https://oxford.universitypressscholarship.com/view/10.1093/oso/9780190249786.001.0001/oso-9780190249786>

43. Iris H-Y Chiu and Edward F Greene, **The Marriage of Technology, Markets and Sustainable (and) Social Finance- Insights from ICO Markets for a New Regulatory Framework**. Available at - [https://discovery.ucl.ac.uk/id/eprint/10067499/1/Chiu_The%20Marriage%20of%20Technology,%20Markets%20and%20Sustainable%20\(and\)%20Social%20Finance%20%E2%94%80%20Insights%20from%20ICO%20Markets%20for%20a%20New%20Regulatory%20Framework_AAM.pdf](https://discovery.ucl.ac.uk/id/eprint/10067499/1/Chiu_The%20Marriage%20of%20Technology,%20Markets%20and%20Sustainable%20(and)%20Social%20Finance%20%E2%94%80%20Insights%20from%20ICO%20Markets%20for%20a%20New%20Regulatory%20Framework_AAM.pdf)

44. Humaniq is a charitable blockchain startup that seeks to blend blockchain technology, biometric identification and mobile devices to provide digital banking solutions to nearly 2.5 billion people situated in parts of the world without proper banking infrastructure

45. Available at <https://humaniq.com/wiki/about-humaniq/ico>.

46. Unlike other countries, Canada does not have a securities regulator at the central or federal level. The Canadian Securities Administrators (CSA) is an unofficial organization that co-ordinates the activities of territorial and provincial securities regulators. The CSA has published a staff notice which outlines the relevant regulatory requirements for companies looking to engage in an ICO. See <https://www.sia-partners.com/en/news-and-publications/from-our-experts/canadian-securities-regulations-cryptocurrency-businesses> and <https://www.osc.ca/en/securities-law/instruments-rules-policies/4/46-307/csa-staff-notice-46-307-cryptocurrency-offerings>.

47. Boulianne, Emilio and Fortin, Melissa, **Risks and Benefits of Initial Coin Offerings: Evidence from Impak Finance, a Regulated ICO**, (May 1, 2020). Available at <https://ssrn.com/abstract=3590629>

3. Global and Indian Case Studies on use of Crypto Assets in Social Finance

In COVID-19 times we have seen several use cases of crypto in social finance space. There is growing interest in channeling some of the wealth that's been created in cryptocurrency to good causes.⁴⁸ This section explores various case studies in which cryptocurrency as well as blockchain technology (since they are in most cases inextricably intertwined) have been used in pursuance of social finance and the problem they have solved. Across the globe, several organizations have used cryptocurrency to raise funds to be put towards relief work or investments into the social sector. Blockchain technology is also being leveraged to ensure coordination and transparency in the sector. With several US based organizations such as the Water Project, GiveWell, Human Rights Foundation, and the American Red Cross accepting donations in cryptocurrency, other organizations are devising unique disbursement and impact investment strategies, which shall be examined in this section.

Why use crypto assets?

While direct donations in form of crypto assets is not yet seen as a popular means of social finance in India, we have elaborated its benefits from future perspective. Charities find it advantageous to receive donations in cryptocurrency, mainly since it simplifies the task of international money transfers.⁴⁹ Transaction fees on money transfers result in a significant deduction from the principal charity amount. With credit card processing fees at approximately 2.2% to 7.5%, donors may consider the use of cryptocurrency in order to prevent such deduction.⁵⁰ Nearly USD 32 billion in remittances do not reach beneficiaries worldwide due to high transaction costs.⁵¹ This situation can be alleviated through the use of cryptocurrency. Moreover, in several jurisdictions that treat cryptocurrencies as assets, no taxes are owed on the capital gains of assets donated to charity, so the charity effectively receives more money if the donated crypto-asset appreciates in value.⁵² Accepting donations in cryptocurrency also helps nonprofits expand their global donor pool. Certain software such as the Giving Block, Charity Engine, and charitable tokens such as AidCoin, built through the Ethereum blockchain, automate and facilitate compliance, transparency, and reporting for nonprofits receiving cryptocurrency donations directly, thereby facilitating raising donations through crypto assets.⁵³

With help of blockchain technology, donors can see where funds are most urgently required and can track their donations until they are provided with a verification that their contributions have been received to the victims. Blockchain would enable transparency for the general public to understand how their donations have been used and its progress.⁵⁴ The underlying blockchain technology also enables the organization to track the crypto funds and check how they are being used.⁵⁵ The use of cryptocurrency in the non-profit sector has the potential to usher in an

48. <https://www.devex.com/news/how-nonprofits-are-navigating-the-rise-of-cryptocurrency-giving-99925>

49. Paul Sullivan, **Nonprofits Get a New Type of Donation: Cryptocurrency**, The New York Times, July 30, 2021. Available at <https://www.nytimes.com/2021/07/30/your-money/cryptocurrency-donation-nonprofit.html>

50. How to donate crypto, Coinbase. Available at https://www.coinbase.com/learn/crypto-basics/how-to-donate-crypto?utm_source=gadgets360&utm_medium=gadgets360&utm_campaign=gadgets360&utm_term=gadgets360&language=en_IN

51. David Lehr and Paul Lamb, **Digital Currencies and Blockchain in the Social Sector**, Stanford Social Innovation Review (2018). Available at https://ssir.org/articles/entry/digital_currencies_and_blockchain_in_the_social_sector

52. Newsdesk, **Cryptocurrency Donations: Find Out Why It's a Better Option Than Making Money Transfers**, Gadgets.NDTV, August 10, 2021. Available <https://gadgets.ndtv.com/cryptocurrency/features/cryptocurrency-bitcoin-ether-donation-details-how-to-tax-free-organisations-accept-unicef-vitalik-buterin-2507334>

53. Priya Prakash Royal. **The Fulcrum in Crypto Donations and the Weight of a Widened Donor Pool**. Bloomberg Tax. July 8, 2021. Available at: <https://news.bloombergtax.com/daily-tax-report/the-fulcrum-in-crypto-donations-and-the-weight-of-a-widened-donor-pool>

54. <https://www.bbvaopenmind.com/en/technology/digital-world/blockchain-technology-and-covid-19/>

55. Paul Sullivan, **Nonprofits Get a New Type of Donation: Cryptocurrency**, The New York Times, July 30, 2021. Available at <https://www.nytimes.com/2021/07/30/your-money/cryptocurrency-donation-nonprofit.html>

3. Global and Indian Case Studies on use of Crypto Assets in Social Finance

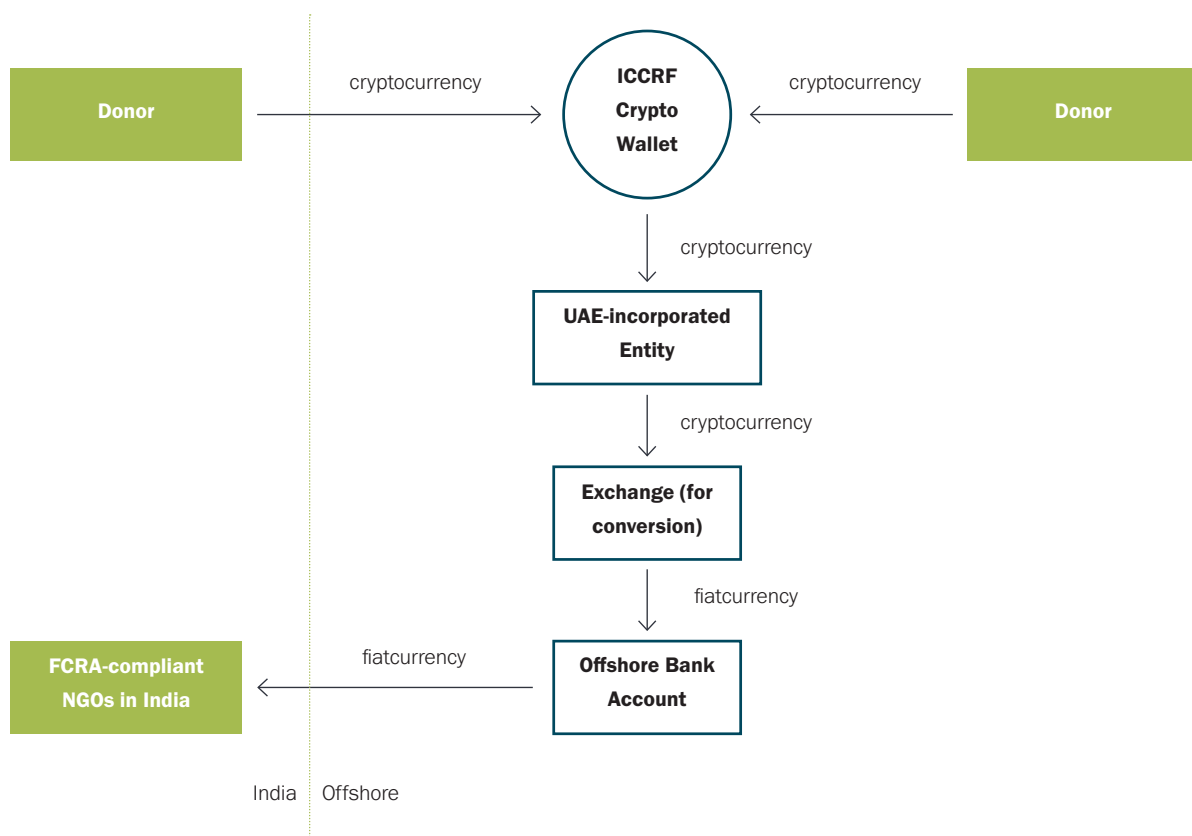
unprecedented level of transparency. If the donations are carried out on a public blockchain, then stakeholders and members of the public can track where their money is going and how it is being spent. For instance, initiatives such as GiveTrack allow donors and the public to track nonprofit transactions on a public platform in real time.⁵⁶ Donors who are concerned about the use of their contributions may find it worthwhile to donate using cryptocurrency and make use of the visibility into downstream activity that blockchain technology provides.

I. Cryptocurrency Funds

A. India Covid Crypto Relief Fund

Purpose: The India Covid Crypto Relief Fund (“ICCRF”) is a community-run fund delivering relief during the COVID-19 crisis in India by providing healthcare and essentials to those affected by COVID-19.⁵⁷

Mode of Operation: The ICCRF provides wallet links to donors across the globe. Donations are received in various crypto assets such as Bitcoin, Ethereum, and Shiba Inu, among others. The ICCRF converts the crypto assets into fiat currency through an entity established in the UAE. The currency is converted through various exchanges and brought to a bank account outside the country. Finally, the funds are transferred to non-governmental organizations (“NGOs”) in India that are compliant with the Foreign Contribution (Regulation) Act, 2010 (“FCRA”). These NGOs oversee the disbursement of services towards those in need.⁵⁸



56. David Lehr and Paul Lamb, **Digital Currencies and Blockchain in the Social Sector**, Stanford Social Innovation Review (2018). Available at https://ssir.org/articles/entry/digital_currencies_and_blockchain_in_the_social_sector

57. Available at <https://cryptorelief.in/>

58. Prasad Banerjee, **Crypto genius gives a billion dollars' worth of joke coin for India COVID Relief**, Livemint, May 14, 2021. Available at <https://www.livemint.com/news/india/crypto-genius-gives-a-billion-dollars-worth-of-joke-coin-for-india-covid-relief-11620892706902.html>

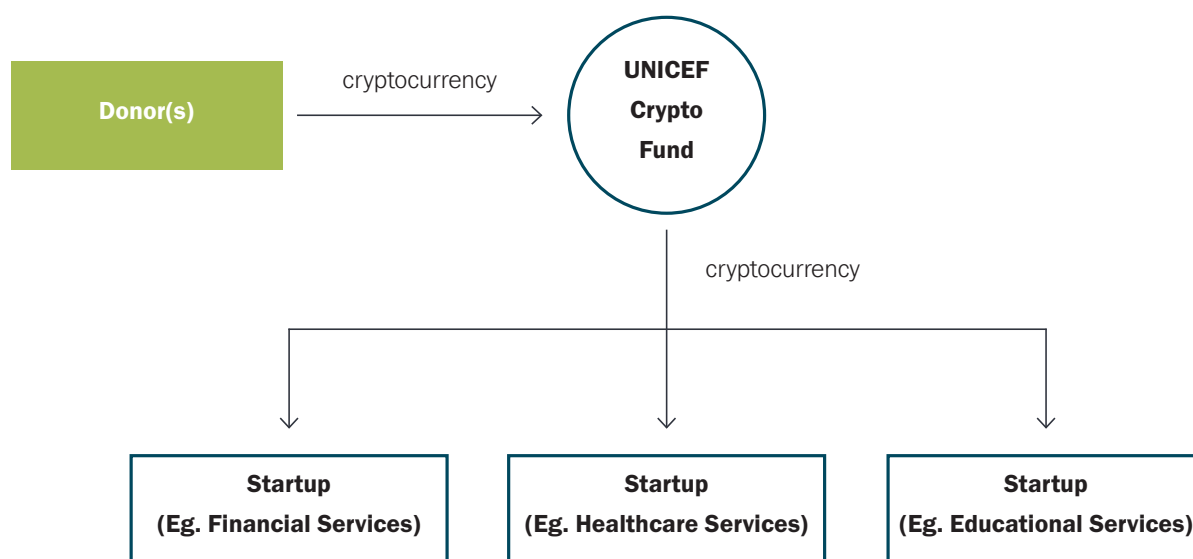
3. Global and Indian Case Studies on use of Crypto Assets in Social Finance

Impact: The ICCRF received a donation of USD 1 billion worth in crypto assets from Vitalik Buterin, the co-founder of Ethereum.⁵⁹ As of October 2021, the ICCRF has transferred a total amount of approximately USD 38 million to various trusts and NGOs for procuring medical equipment, oxygen cylinders and ration kits. Transfers have also been made for activities such as constructing ICU facilities and conducting medical training programs.⁶⁰ Interestingly, the ICCRF maintains logs of all beneficiaries to whom such donations are transferred. Most notably, the ICCRF had made headlines in late August, 2021 when it donated USD 15 million to UNICEF for the procurement of 160 million vaccination syringes which will be used to expedite India's vaccination drive.⁶¹ The Fund has also made a donation of INR 5 crore to the Indian Institute of Science ("IISc") for the purpose of conducting research related to COVID-19 at its Centre for Infectious Disease Research.⁶²

B. UNICEF CryptoFund

Purpose: The UNICEF CryptoFund, a part of the UNICEF Innovation Fund, was set up to explore the emerging modes of digital finance and invest in start-ups that engage in work relevant to the UNICEF.⁶³

Mode of Operation: The CryptoFund receives donations in the form of cryptocurrency. It invests this cryptocurrency in start-ups around the world that engage in relevant work such as access to healthcare, financial services, and education. The investments are made directly in the form of cryptocurrency without converting it to fiat currency. Such direct investment brings two advantages: low transaction costs and inherent transparency that enables stakeholders to monitor investments.⁶⁴



Impact: The CryptoFund received cryptocurrency worth approximately USD 6.6 Million. Of this, cryptocurrency amounting to approximately USD 3.7 Million has been invested in start-ups.

59. Prasad Banerjee, **Crypto genius gives a billion dollars' worth of joke coin for India COVID Relief**, Livemint, May 14, 2021. Available at <https://www.livemint.com/news/india/crypto-genius-gives-a-billion-dollars-worth-of-joke-coin-for-india-covid-relief-11620892706902.html>

60. Accessed from data published in India COVID Crypto Relief Fund. Available at <https://cryptorelief.in/transparency>

61. **India COVID Crypto Relief Fund to donate \$15 million to UNICEF**, The Economic Times, August 27, 2021, Available at - <https://economictimes.indiatimes.com/tech/tech-bytes/india-covid-crypto-relief-fund-to-donate-15-million-to-unicef/articleshow/85694682.cms>

62. Available at <https://cryptorelief.in/stories/crypto-relief-supports-ii-sc-to-establish-genome-sequencing-1>

63. Available at www.unicef.org/innovation/stories/unicef-cryptofund; See also <https://cryptofund.unicef.io/>

64. Available at www.unicef.org/innovation/stories/unicef-cryptofund.

3. Global and Indian Case Studies on use of Crypto Assets in Social Finance

C. GiveCrypto

Purpose: To accept donations and distribute cryptocurrency to persons living in poverty, especially in areas where financial access is cut off.⁶⁵

Mode of Operation: GiveCrypto distributes cryptocurrency in the same manner as an unconditional cash transfer. Persons in need of financial access are identified and onboarded to GiveCrypto, which then distributes the money it has received through donations. The beneficiaries may also raise specific requests on the platform, under the heads of education, medicine, or housing for instance, and receive donations. The end-use of the cryptocurrency is left to the beneficiary, who may transact using crypto, which enables them to access a wide range of digital services, or convert it into their local currency.

Impact: GiveCrypto has distributed over \$350,000 to 4,964 people since its operations began in 2018. The beneficiaries were “unbanked” persons that were identified across the world, living in difficult circumstances such as refugee camps where currencies are forbidden, persons in situations of domestic abuse, and those without access to finance and microfinance.

D. Save The Children

Purpose: Save the Children aims to use cryptocurrency contributions towards conducting various projects such as lending mechanisms for financially excluded sections of society, improving academic records for children and providing digital methods of identification for refugees.⁶⁶

Mode of Operation: Save the Children was the first international NGO to accept a crypto asset as a donation in 2013. Presently, it accepts donations in over 30 crypto currencies including Bitcoin, Ethereum, Dogecoin and Litecoin. Further, it also accepts donations in the form of sales from Non-Fungible Tokens (“NFTs”), provided that the sale proceeds have been converted into an accepted crypto currency before the donation is made.⁶⁷

Donations made in crypto currencies to Save the Children offer dual tax benefits to donors. Firstly, crypto currency donations are classified as property and are tax deductible as a result.⁶⁸ Secondly, donations made to Save the Children and similar non-profit organization registered under section 501(c)(3) of the United State Code are exempt from federal income tax.⁶⁹

E. MaskOn Charity⁷⁰

Purpose: MaskOn Charity is Vietnam-based charity fund founded by a group of seven prominent Vietnamese professionals in the blockchain industry that seeks to use cryptocurrency donations to provide medicines such as remdesivir and molnupiravir, along with essential commodities like food, water and masks to the affected population.

Mode of Operation: MaskOn Charity has initiated a fundraising period till November, 2021, during which it will accept donations from around the world in crypto currencies and NFTs. Recognizing the issue of volatility and price fluctuation, MaskOn Charity has urged donors to make donations in stablecoins. After the expiry of the

65. Available at <https://givecrypto.org/>.

66. Available at <https://www.savethechildren.net/news/cryptocurrency-donations-set-fund-innovation-hub-rwanda-aid-children>.

67. Available at <https://www.savethechildren.org/us/ways-to-help/ways-to-give/ways-to-help/cryptocurrency-donation>.

68. IRS Notice 2014-21, 2014-16 I.R.B. 938. Available at <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>

69. Internal Revenue Code, U.S.C 26, §501(c)(3) (2011). Available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title26/html/USCODE-2011-title26-subtitleA-chap1-subchapF-part1-sec501.htm>

70. Stephanie Pearl Li, Can a Crypto COVID-19 relief fund reshape philanthropy in Vietnam?, KRASIA, 19th October, 2021. Available at <https://krasia.com/can-a-crypto-covid-19-relief-fund-reshape-philanthropy-in-vietnam>.

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fundraising period, MaskOn will withdraw the donations through coin exchanges and transfer the money to Mai Am Hanh Phuc, a registered non-profit that will be responsible for procuring and delivering the medicines and resources. In the interest of accountability and transparency, MaskOn Charity has also ensured that its donation flow will be made available on a blockchain that is accessible to the public.

Impact: As of October 2021, MaskOn Charity has raised approximately USD 62,000 worth of cryptocurrency through various donations. This also includes a crypto currency donations worth USD 10,000 from Sandeep Nailwal, the founder of ICCRF. MaskOn Charity seeks to raise more funds to raise more funds by November to remedy the effects of the devastating fourth wave of COVID-19 in Vietnam.

F. Binance Charity

Purpose: Binance Charity aims to make use of crypto currency donations to provide essential relief to combat the negative consequences of the COVID-19 pandemic in 41 countries. Binance Charity has also used crypto currency donations to assist in the Vaccine Equity Program organized by UNCIEF. Additionally, Binance Charity is also involved in supporting a plan for post-COVID recovery in various nations.⁷¹

Mode of Operation: Binance Charity receives donations from around the globe in various crypto currencies such as Bitcoin, Ethereum, Ripple and Binance Coin, a crypto currency largely used for transactions on the Binance platform. After receiving the donations, Binance Charity makes direct transfers to beneficiaries or country-specific funds through Binance USD, a stablecoin that is backed by the US Dollar and the New York State Department of Financial Services.⁷² Binance Charity has also made donations to UNCIEF Luxembourg through Bitcoin.⁷³

Impact: Binance Charity has received donations worth approximately USD 7 million in crypto currency and has donated nearly USD 6 million so far. Out of the total amount donated, approximately USD 5 million has been received directly by beneficiaries, while the rest has been received by UNICEF Luxembourg for the Vaccine Equity Programme. Binance Charity has assisted in COVID relief efforts in 41 countries and has utilized the funds it received to acquire and deploy medical supplies such as masks, gloves, sanitizers, oxygen concentrators and personal protective equipment.⁷⁴

G. Built with Bitcoin

Purpose: Built with Bitcoin Foundation is an international humanitarian organization that utilizes crypto currency donations to primarily provide infrastructural development such as potable drinking water facilities, higher quality education and sustainable agriculture.⁷⁵

Mode of Operation: Built with Bitcoin Foundation accepts donations in crypto currencies such as Bitcoin, Ethereum, Litecoin and Dogecoin. The foundation also accepts donations made in over 40 types of ERC-20 tokens. 92% of the amount received through donations is transferred directly to beneficiaries while the remaining amount is used to meet operational and other overhead expenses. Donors making contributions to the Foundation can avail tax-deductions as it as a registered 501(c)(3) non-profit company.⁷⁶

71. Available at <https://www.binance.charity/project/old/crypto-against-covid>.

72. Available at - <https://www.binance.com/en/busd>.

73. Data pertaining to donations received and funds allocated are available at - <https://www.binance.charity/project/old/crypto-against-covid>.

74. Binance Charity, Crypto against COVID Impact Report. Available at - [https://resource.binance.charity/documents/1543ecd7c5144a5784aofa-6f8aa9a6cd_Crypto%20Against%20COVID%20Campaign%20Summary%20\(new%20design\)%20-%20Google%20Docs.pdf](https://resource.binance.charity/documents/1543ecd7c5144a5784aofa-6f8aa9a6cd_Crypto%20Against%20COVID%20Campaign%20Summary%20(new%20design)%20-%20Google%20Docs.pdf)

75. Available at - <https://www.builtwithbitcoin.org/philosophy>

76. Available at <https://www.builtwithbitcoin.org/faqs>.

3. Global and Indian Case Studies on use of Crypto Assets in Social Finance

Impact: As per its 2020 financial reports, Built with Bitcoin Foundation has received approximately USD 265,000 in crypto currency donations. Out of this amount, nearly USD 196,000 has been donated to construct Water Filtration Centers and schools in Kenya, Nigeria and Rwanda. Donations were also made to the Africa Fund for COVID-19 relief.⁷⁷ Further, the Foundation has also partnered with Child Rights & You, a leading NGO in India, and raised nearly 8.5 lakh rupees to provide clothes, hygiene supplies and educational materials to young students in India.⁷⁸

H. Pan-Impact Korea Social Impact Bond

Purpose: Pan-Impact Korea, South Korea's first Social Impact Bond ("SIB") design agency had partnered with the Metropolitan Government of Seoul in 2015-16 to assist 100 borderline intellectual functioning children with education and learning abilities. In 2018, Pan-Impact Korea implemented a Smart Contract SIB on the Ethereum blockchain to address the challenge of the SIB being non-securitized.⁷⁹

Mode of Operation: After implementing the SIB Smart Contract on the blockchain, Pan-Impact Korea issued 1,110,000 Smart Contracts Units, on the basis of the amounts that each person had invested. By securitizing the SIB on a blockchain platform, investors were able to trade and liquidate the money they had invested in the form of Smart Contract Units. After the impact of the social program was assessed, an investor could receive an automatically tabulated and calculated payout.⁸⁰ By avoiding any trades in crypto currency, the Smart SIB protected itself against price fluctuations. Additionally, all the information pertaining to the Smart SIB was recorded in a transparent manner to ensure accountability.⁸¹

Impact: SIB are generally executed as private investment (or loan) contracts between the parties, unlike bonds tradable in the market. This lack of a securitization implies SIBs are tough to liquidate and trade, which makes investments in them risky for private capital managers. This limitation is hindering SIBs from growing to its full potential and this is the problem with smart SIB will solve.⁸²

The following diagram illustrates the structure and benefits of the Smart SIB⁸³

77. Available at – <https://static1.squarespace.com/static/603d7ebb53ae332afb19165a/t/60ce734cf418333713f8d1bd/1624142668831/BWB++2020+Financial+Statement.docx.pdf>

78. Available at - <https://paxful.com/blog/built-with-bitcoin-india/>

79. Available at <http://www.businessworld.in/article/Korea-Pioneers-A-Way-To-Scale-Up-Social-Impact-Bonds-In-A-post-COVID-world/20-11-2020-344861/>

80. Available at - <https://avpn.asia/blog/the-first-smart-social-impact-bond-innovative-synergies-blockchain-and-sibs/>

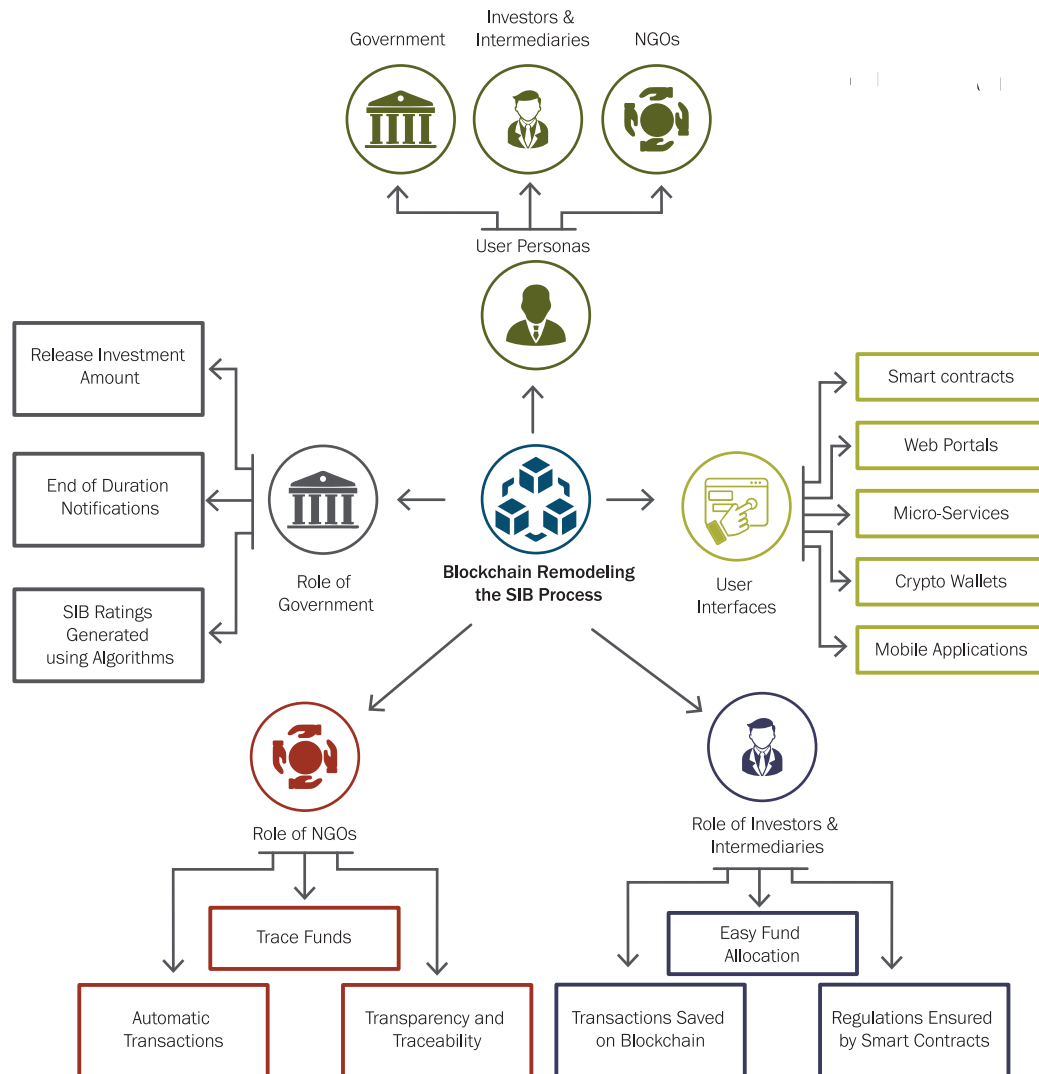
81. Available at <http://www.businessworld.in/article/Korea-Pioneers-A-Way-To-Scale-Up-Social-Impact-Bonds-In-A-post-COVID-world/20-11-2020-344861/>

82. Available at - <https://www.bbvaopenmind.com/en/economy/global-economy/blockchain-innovations-for-social-impact-at-scale/>

83. Available at - <https://www.leewayhertz.com/blockchain-in-social-impact-bonds/>

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Blockchain - Remodeling SIB Process



In recent times, charity tokens based on blockchain technology have also emerged as an innovative technological solution to address social and environmental issues.⁸⁴ Elongate.cc is a charity token that has raised nearly USD 3 million for international NGOs such as Human Relief Foundation, Action Against Hunger and Children International. Saveplanetearth.io seeks to improve the Earth's landscape through programs such as improved tree coverage, marine management and climate change countermeasures. Aquari.io is an environmental organization that uses crypto technology for the restoration of the Earth's water bodies. Similarly, World of Waves (“\$WOW”) is another charity token built on the Binance Chain that uses funds for aquatic wildlife welfare projects that the \$WOW community votes on. Savetheworld.health is another Binance Chain based charity token and it seeks to assist in COVID-19 relief in India. Pangeaoceancleanup.com (\$POC) is a charity token that has raised nearly USD 500,000 to clean the ocean and beaches in 10 nations. Aquagoat.finance is an ecological focused DeFi token that is partnered with 7 NGOs to save the Earth's oceans. Thehappycoin.co is an example of a charity token that raises funds to combat mental health issues. Lastly, Anji.eco seeks to create an ecosystem for investors specifically looking to invest in charity tokens. It also seeks to enable token creators to establish new charity tokens with ease.⁸⁵

84. <https://www.iisd.org/system/files/publications/impact-tokens.pdf>

85. Available at - <https://www.nasdaq.com/articles/crypto-with-a-cause%3A-these-nine-charity-tokens-will-save-the-world-2021-08-25>

II. Blockchain in Social Finance

In addition to crypto use cases, which have not taken off in India currently in the social finance space, blockchain technology is being leveraged by the Indian Government. A prime example is set out below:

A. Maharashtra State Board of Skill Development – LegitDoc

Purpose: The Maharashtra State Board of Skill Development (“**MSBSD**”) seeks to combat fabrication of educational documents, such as diplomas, by implementing a blockchain to digitally verify the documents.⁸⁶

Mode of Operation: In partnership with LegitDoc, an Indian blockchain startup, the MSBSD plans to implement a public blockchain based on the Ethereum network. With this system, the issuing body first generates a certificate as a PDF to which it issues a unique ‘fingerprint’. One condensed ‘fingerprint’ is generated for each batch of certificates. This in turn is uploaded on the Ethereum blockchain against the issuer’s public key.⁸⁷ All MSBSD students will receive a file that contains the original PDF diploma certificate as well as the software’s proof from the Ethereum blockchain. Students, graduates, employers, or any other university can do the authentication and verification process for a student’s diploma.⁸⁸

Impact: The implementation of this project is projected to be cost-effective and migration friendly for students, and significantly curb the circulation of fake diplomas.⁸⁹

The Indian NGO, Akshaya Patra Foundation, runs the world’s largest mid-day meal program of its kind and started to use blockchain technology to track food delivery to make the process much more efficient.⁹⁰

Challenges to Crypto Asset Adoption in India

However, the lack of increased use cases of crypto assets in the Indian context is due to a complex and ambiguous legal, tax and regulatory framework. This is made clear from the public positions of regulators set out below and the analysis of the legal regime in the next chapter.

- a. The Reserve Bank of India (“**RBI**”):
 - i. On December 24, 2013 the RBI addressed crypto-assets in a press release⁹¹ stating that it was observing developments on “**Decentralised Digital Currency**” or “**Virtual Currency**”, such as, **Bitcoins, litecoins, bbqcoins, dogecoins etc.**”. The press release indicated that crypto-assets (I) are vulnerable to cyber-attacks; (II) have no central regulator to resolve disputes; (III) do not have any underlying asset and are volatile; (IV) are reported to have been used for illegal activities; and that (V) their legal status is unclear. The press release also clarified that no regulatory approvals, registration or authorization was obtained by entities carrying on such activities.

86. Maharashtra govt warms up to blockchain tech for tamper-proof education certificates, Times of India. Available at <https://timesofindia.indiatimes.com/spotlight/maharashtra-govt-warms-up-to-blockchain-tech-for-tamper-proof-education-certificates/articleshow/85796401.cms>

87. Maharashtra govt warms up to blockchain tech for tamper-proof education certificates, Times of India. Available at <https://timesofindia.indiatimes.com/spotlight/maharashtra-govt-warms-up-to-blockchain-tech-for-tamper-proof-education-certificates/articleshow/85796401.cms>

88. DQIndiaOnline, Maharashtra to use Ethereum blockchain to verify diploma certificates, DQ India; Available at <https://www.dqindia.com/maharashtra-use-ethereum-blockchain-verify-diploma-certificates/>

89. DQIndiaOnline, Maharashtra to use Ethereum blockchain to verify diploma certificates, DQ India; Available at <https://www.dqindia.com/maharashtra-use-ethereum-blockchain-verify-diploma-certificates/>

90. <https://timesofindia.indiatimes.com/blogs/voices/cryptocurrency-the-future-of-philanthropy/>

91. Available at https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=30247

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- ii. On February 1, 2017 the RBI clarified that it had not granted any license or authorization to any entity to deal with Bitcoin or any other crypto-asset and that any entity would be doing so at their own risk.⁹²
- iii. Recognizing an increasing valuation of crypto-assets and the growth of initial coin offerings, the RBI, on December 5, 2017 reiterated its earlier circulars mentioned above.⁹³

b. The Ministry of Finance:

The Ministry of Finance issued a statement on December 29, 2017⁹⁴ cautioning consumers on the volatile nature of crypto assets and clarified that crypto assets are neither currencies nor coins nor any form of legal tender since they are not backed by any fiat currency. It reiterated the cautions given by the RBI in its press release dated December 24, 2013 and compared crypto assets to ponzi schemes.

c. Inter-ministerial committee report on virtual currencies:

The Government of India constituted an inter-ministerial committee (“**IMC**”) headed by the Department of Economic Affairs under the Ministry of Finance (“**DEA**”) to study issues related to crypto assets and propose specific action. The IMC published its report on February 28, 2019⁹⁵ and provided four broad recommendations:

- i. The IMC recognized the importance of the digital ledger technology that underlies crypto assets and recommended necessary measures and regulations to facilitate its use and development;
- ii. In particular to crypto assets, the IMC noted that:
 - i. Crypto assets are not issued by any state parties of any jurisdiction and are created by non-sovereigns and are privately held;
 - ii. Crypto assets do not have any underlying intrinsic value and lack the attributes of a currency such as representing value or acting as a medium of exchange. Crypto assets cannot serve as replacements to fiat currencies.
 - iii. No jurisdiction had recognized crypto assets as legal tender;
 - iv. Supplementing the RBI’s stand on crypto assets, the IMC recommended that all crypto assets, except any crypto asset issued by the State, must be banned in India.
 - v. It endorses the RBI’s stand to prohibit its regulated entities from providing an interface to crypto assets;
 - vi. It recommended a draft law titled “Banning of Cryptocurrency and Regulation of Official Digital Currency Act, 2019” that banned crypto assets in India and criminalized any activities in relation to them; and
 - vii. It recommends the government to establish a standing committee to study the technological developments globally and in India including the views of global standard setting bodies;

92. Available at https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=39435

93. Available at https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=42462

94. Available at <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1514568>

95. Available at <https://dea.gov.in/sites/default/files/Approved%20and%20Signed%20Report%20and%20Bill%20of%20IMC%20on%20CA%2028%20Feb%202019.pdf>

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- iii. The IMC recommended that the establishment of an official digital currency issued by the State must be examined;
- iv. The IMC also recommended further examination of the use of digital ledger technology for various other financial and associated services such as payments, know-your-customer systems, lending, securities, fraud prevention and data protection.

4. Regulatory and Tax Framework for Crypto Assets in India

I. Regulatory Framework

Background

As the law currently stands, there is no clear definition of virtual currencies, crypto assets or cryptocurrencies in India (except the definition of virtual digital assets (“VDA”) as proposed in the Finance Bill, 2022 for tax purposes). On March 4, 2020, the Supreme Court of India set aside, on constitutional grounds, a circular issued by the RBI, which restricted the use of regulated banking and payment channels for the sale and purchase of virtual currencies (the “IAMA case”).⁹⁶ This affirmed virtual currency exchanges’ fundamental right to trade and do business, guaranteed under the Constitution of India.

In the past, the RBI and the Ministry of Finance had issued warning statements about the risks associated with virtual currencies, including money laundering, market integrity, cybersecurity and volatility. However, various government committee reports have also lauded certain advantages of virtual currencies, such as efficiency and cost-savings.

In July 2019, an Inter-Ministerial Committee established by the Ministry of Finance released a report on a proposed regulatory approach towards distributed ledger technology and virtual currencies (the “IMC Report”). The Committee recommended an outright prohibition, along with criminal penalties, on dealing with virtual currencies.⁹⁷ It also recommended the promotion of distributed ledger technology without the use of virtual currencies, and the exploration of a sovereign digital currency. The Committee’s recommendation is non-binding and appears to be under consideration by the government. In March 2021 and August 2021, the Finance Ministry stated that “**The Government would take a decision on the recommendations of the IMC and the legislative proposal, if any, would be introduced in the Parliament following the due process.**”⁹⁸

Recently, the Lok Sabha (the lower house of the Indian Parliament) listed the “**Cryptocurrency and Regulation of Official Digital Currency Bill, 2021**” (“**Proposed Bill**”) as one of the new bills for consideration in its tentative list of business for the winter session of the Parliament.⁹⁹ However, legislation is yet to be passed confirming the final policy stance of the Government crypto assets.

Further, in a related development, the Finance Minister while presenting the Union Budget 2022 announced introduction of Central Bank Digital Currency (“CBDC”) by the RBI using blockchain starting 2022-23.

From a regulatory perspective, despite the IAMA case, which throws some light on the legal characteristics of virtual currencies, there is no law that expressly classifies virtual currencies as goods or commodities, services, securities, derivatives or currencies. The categorisation of virtual currencies into one or more of these stated classes is important, as the existing law would apply differently based on the categorisation.

96. Internet and Mobile Association of India v. Reserve Bank of India, W.P.(C) 528/2018, Supreme Court of India, March 04, 2020

97. Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies. February 28, 2019. Available at: <https://dea.gov.in/sites/default/files/Approved%20and%20Signed%20Report%20and%20Bill%20of%20IMC%20on%20VCs%2028%20Feb%202019.pdf>

98. Available at <http://loksabhaph.nic.in/Questions/QResult15.aspx?qrref=21027&lsno=17> and <http://164.100.24.220/loksabhaquestions/annex/176/AU3412.pdf>

99. Available at <http://loksabhadocs.nic.in/bull2mk/2021/23.11.21.pdf>

4. Regulatory and Tax Framework for Crypto Assets in India

II. Tax framework

Prior to the amendments proposed by the Finance Bill, 2022 (“**Finance Bill**”), the Income-tax Act, 1961 (“**ITA**”) did not provide any guidance on taxation of crypto assets. Industry participants were categorizing transactions as either trading income and claim expenses or pay long term capital gain tax at rate of 20% based on the facts of the case. From a GST perspective also, currently, there is no guidance on the manner in which GST provisions are applicable to transactions in VDAs. Further, there are no guidelines prescribed for valuation of VDAs. This created several open issues and grey areas for all participants in the industry.

Recognizing that VDAs have gained tremendous popularity in recent times and the substantial increase in trading volumes, the Finance Bill proposed a taxation regime for VDAs in India.¹⁰⁰ The following changes have been proposed under the ITA with respect to taxation of VDAs applicable with effect from financial year 2022-23:

- a. **Definition of VDA¹⁰¹:** The Finance Bill provides an exhaustive but broad definition of VDA where the following criteria need to be met to qualify as a VDA (irrespective of the terminology or nomenclature):

Necessary Criteria:

- any information or code or number or token,
- generated through cryptographic means or otherwise,
- can be transferred, stored or traded electronically;

Additional Criteria (one of which needs to be satisfied):

- providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or
- functions as a store of value or a unit of account (including its use in any financial transaction or investment, but not limited to investment scheme);

Exclusions: Indian currency or foreign currency as defined under Foreign Exchange Management Act, 1999 (“**FEMA**”)¹⁰² is excluded from the ambit of VDA meaning that anything that is Indian currency or foreign currency is automatically not a VDA.

It is also pertinent to note that the Finance Bill empowers the Central Government to notify any other digital asset as a VDA or exclude any digital asset from the definition of VDA.

- b. **Taxing income from transfer of VDAs under section 115BBH at a special rate of 30%:** The Finance Bill proposes to introduce section 115BBH to provide a special tax rate of 30% for taxing income from transfer of any VDAs. Such income shall be computed without taking effect of:

- Any deduction in respect of any expenditure (other than cost of acquisition) incurred for such transfer;
- or

100. Please note that the Finance Bill is pending approval from the Lok Sabha and Rajya Sabha. The final tax regime for VDAs may undergo some change at the stage when the bill is passed by the Parliament.

101. The definition of VDAs may change once the Finance Bill is passed as news reports suggest that the government is contemplating further broadening the definition to ensure that it covers new products which may be developed in future

102. Section 2(q) of FEMA defines Indian currency as, “**Indian currency**” means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934 (2 of 1934)”. Further, section 2(m) of the FEMA defines foreign currency as “**foreign currency**” means any currency other than Indian currency”.

4. Regulatory and Tax Framework for Crypto Assets in India

- Any allowance or set off of any loss.
- c. **Gift tax on VDAs:** The Finance Bill also proposes to impose tax at rate of 30% in the hands of the recipient on receipt of VDAs without consideration or for a consideration which is less than the fair market value of the VDA by an amount exceeding INR 50,000. However, there are situations like receipt of property (which includes VDAs) from relative, receipt of property under will or inheritance etc. are not subject to gift tax.
- d. **Withholding tax provision on payments for transfer of VDA to a resident:** The Finance Bill also proposes the introduction of section 194S to the ITA. Section 194S of the ITA obligates any person responsible for paying to a resident any sum by way of consideration for transfer of a VDA to withhold tax at rate of 1% at the time of payment or credit, whichever is earlier. Section 194S also obligates the person responsible for paying to a resident any sum by way of consideration for transfer of a VDA to ensure that tax has been paid in respect of such consideration for the transfer of VDA in case where:
- consideration for transfer of VDA is wholly in kind or in exchange of another VDA, where there is no part in cash; or
 - partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer.

A. Characterization of crypto assets

The table below discusses some of the key characterization of crypto assets as securities / deposits / commodities / VDAs and corresponding implications:

S No	Characterisation of crypto assets	Regulatory Implications	Income-tax implications	GST implications
			Taxation of income is governed by the provisions of the ITA	The relevant laws concerning GST are the Central Goods and Services Tax Act 2017, the Integrated Goods and Services Tax Act 2017 (the "IGST Act") and the respective State Goods and Services Tax Acts, which each have a different jurisdictional ambit
While the Finance Bill has proposed a tax regime for VDAs, securities or commodities have not been excluded from the definition of VDAs.				
1.	Securities The Securities Contracts (Regulation) Act 1956 (" SCRA ") provides a non-exhaustive definition of securities, and there is currently no regulatory guidance on its application in the context of crypto assets.	Crypto assets do not fall within the enumerated items of the definition of securities. Further, the items under the definition derive their value from an underlying asset. However, crypto assets like Bitcoin and Ether do not have underlying assets. Rather, the value is determined purely based on demand and supply.	Where token issued through ICOs qualify as securities, the following income-tax implications may arise: ▪ Income from transfer of such crypto assets: the one of the key issues is whether income from crypto assets may be treated as capital gains or profits and gains of a business or profession.	Transactions in securities are outside the ambit of GST.

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<p>Some issuances of virtual currency tokens may also amount to collective investment schemes, which are regulated under the Securities and Exchange Board of India Act 1992.¹⁰³</p>	<p>Further, crypto assets such as Bitcoin often do not have an identifiable issuer, unlike the items in the definition of security under Indian law.</p> <p>However, some tokens (although not all) issued through ICOs may fall within the ambit of the SCRA if they are issued by an Indian entity and meet the above tests. This is likely to be the case if they are issued by an identifiable issuer and are backed by the underlying assets of the issuer. Such tokens should be subject to regulation under the Companies Act, 2013 (“Companies Act”) (in respect of requirements surrounding the issuance and transfer of securities) and the SCRA (in respect of securities only being allowed to be listed on licensed stock exchanges).</p>	<p>If income from crypto assets is considered as business income, it will be taxable in India only if the non-resident has a permanent establishment in India (assuming they are from a treaty country). Further, in the case of characterisation as capital gains, as capital gains are typically taxed in India only if the asset is located in India, determining the location of the virtual currency to establish a nexus may be important. The position in relation to the location of a virtual currency is unclear. The Supreme Court in the IAMA case noted that a virtual currency has no location. In our view, the location of the owner is the closest approximation of location for the crypto asset. Currently, the ITA and its associated rules do not specifically refer to the treatment of crypto assets and there have been no judicial precedents in this regard.</p> <ul style="list-style-type: none"> ■ Valuation of crypto assets: In case a person receives any property for a consideration which is less than the fair market value computed under the ITA, the ITA contains provisions which deem the FMV of such property to be income in the hands on the receipt. In such a case, since there are no specific rules for valuation of crypto assets, it may be a challenge 	
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¹⁰³. This will be the case if: (1) the contributions, or payments made by the investors, by whatever name called, are pooled and utilised for the purposes of the scheme or arrangement; (2) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement; (3) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and (4) the investors do not have day-to-day control over the management and operation of the scheme or arrangement

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2.	<p>Deposits</p> <p>The regulations under the Companies Act and the Companies (Acceptance of Deposits) Rules 2014 (Deposits Rules) specify when the receipt of money, by way of deposit or loan or in any other form, by a company would be termed a deposit, and also provides certain exemptions from its applicability.</p> <p>For example, any amount received in the course of business as an advance for the supply of goods or services would not be a deposit if the advance is appropriated against the supply of such goods or services within 365 days.</p>	<p>If a company is deemed to be accepting deposits, a variety of compliance steps under the Companies Act and its rules, along with RBI regulations, would be triggered. Only the receipt of money, and not virtual currency, would trigger these steps.</p> <p>Further, after the issuance of the Banning of Unregulated Deposit Schemes Act 2019, virtual currency token issuers will need to ensure, to be outside the purview of the Act, that any money received should not be liable to be returned.¹⁰⁴</p>	Not applicable	Not applicable
3.	<p>Commodities</p> <p>In the IAMA case, the Supreme Court expressed some doubt over whether a crypto asset could be classified only as a good or commodity. Ultimately, it held that a virtual currency is an intangible property that acts under certain circumstances as money.</p>	<p>India is a country with capital controls, where the inflow of foreign exchange into and outside the country is regulated under the Foreign Exchange Management Act 1999 (“FEMA”). If virtual currencies are classified as commodities, the activity of operating an exchange for trading virtual currencies may be regulated as a commodities exchange, which can have implications under India’s regulation on inward foreign direct investment (“FDI”), that is, the Foreign Exchange Management (Non-debt Instruments) Rules 2019 (the “NDI Rules”).¹⁰⁵</p>	Where crypto assets qualify as commodities, the income-tax implications will depend on whether such asset considered to be used for the purpose of business or is considered as a capital asset.	<p>There is no specific government guidance on the application of GST to virtual currencies.</p> <p>The Tariff Schedule for Goods currently contains no specific category for crypto assets but it does contain a residuary category of goods. Crypto assets may therefore fall within the residuary category. Under the GST regime, GST is chargeable on transactions where goods are supplied in the course or furtherance of business. As there are a multitude of virtual currencies and each transaction varies in nature, determinations must be made on a case-by-case basis as to whether GST is to be paid.</p>

¹⁰⁴. The term deposit includes ‘an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include . . . [certain enumerated categories]’. The Act provides a schedule of regulated deposit schemes, and all unregulated deposit schemes are prohibited

¹⁰⁵. The NDI Rules provide that FDI in “commodity spot exchanges” is allowed up to 49% in the “automatic” route i.e. without government approval

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		<p>As the law stands, virtual currencies may not be regulated as commodities within the meaning of the NDI Rules. According to a SEBI Circular¹⁰⁶ read with a central government notification¹⁰⁷ under the SCRA, the central government has notified certain goods for the purpose of the term commodity derivative under the SCRA and does not include any virtual currency. While this notification is only applicable to commodity derivatives and not ready delivery contracts, it provides the closest guidance on the point of what may be considered a commodity exchange at the moment.</p> <p>However, the central government may at any time choose to notify virtual currencies (in general, or any class of them) as commodities under the above notification. This would bring derivatives contracts in virtual currencies within the SCRA (and hence, SEBI's jurisdiction). For spot trading, FDI would then be restricted to 49% of the capital. There is currently no separate licensing regime for commodities spot exchanges.</p>		<p>Persons selling goods in the course or furtherance of business and requiring GST registration (which depends on persons meeting an annual revenue threshold) are required to include GST in their sale invoices.</p> <p>Under the IGST Act, tax is levied when goods are imported into the country. As virtual currencies are digital goods, unless they are stored in a wallet that is in a physical medium, such as a pen drive or a hard drive, they are unlikely to be subject to customs duties as such duties apply only to the import of tangible goods. Therefore, in practice, IGST may not be levied as the tax mechanism prescribes that IGST shall be applicable only at the point in time when customs is payable on the import of goods into India.</p> <p>Additionally, GST should be payable with respect to services provided (e.g., services of a trading exchange) in connection with the sale and purchase of virtual currencies. Where a person sells virtual currencies as a hobby, there should be no GST consequences. Sales of virtual currencies where they were initially held as an investment should also attract no GST liability.</p>
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106. SEBI/HO/CDMRD/DMP/CIR/P/2016/105

107. S.O. 3068(E) (Ministry of Finance, Department of Economic Affairs)

4.Regulatory and Tax Framework for Crypto Assets in India

				Double taxation issues may arise where consumers might be subject to GST while purchasing virtual currencies, and again on their use in exchange for other goods and services that are in turn subject to GST. These issues have yet to have been accounted for by the GST regime.
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The Finance Bill proposes creation of a separate class of asset i.e. VDA and a separate tax framework for income arising from transacting in VDAs

4.	VDAs (based on amendments as proposed by Finance Bill)	NA	<ul style="list-style-type: none"> ■ Any income from transfer of VDAs will be subject to tax at flat rate of 30% (plus applicable surcharge and cess) irrespective of the period of holding. The taxpayers will not be permitted to take any deductions (except the cost of acquisition) while computing income from transfer of VDAs. ■ The person responsible for paying to a resident any income from transfer of VDAs is required to withhold tax at rate of 1%. The obligation to withhold taxes is applicable even on payment of income from transfer of VDAs in kind to a resident. ■ A person receiving VDAs without consideration or for a consideration which is less than the fair market value of the VDA by an amount exceeding INR 50,000, would be deemed to have income from other sources taxable at rate of 30%. 	<p>Given that VDAs have been included in the definition of property under section 56(2)(x) of the ITA, it may be possible to argue that from a GST perspective VDAs may qualify as property / commodity. Accordingly, the implications stated in row 3 above may be applicable.</p> <p>However, it is pertinent to note that news reports suggest the government is examining applicability of GST on cryptocurrency transactions and a proposal has been taken to GST Council.¹⁰⁸</p>
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108. Anuradha Shukla & Deepshikha Sikarwar. Feb 11, 2022. Tax on digital assets could go up, govt mulling GST on crypto mining, supply. The Economic Times. Available at: <https://economictimes.indiatimes.com/news/economy/policy/tax-on-digital-assets-could-go-up-govt-mulling-gst-on-crypto-mining-supply/articleshow/89465542.cms>

4. Regulatory and Tax Framework for Crypto Assets in India

In so far as foreign investment in crypto assets business is concerned, it will have to be determined whether crypto assets business would fit in the category of “Other Financial Services” (“OFS”). FDI in OFS is fully allowed in the automatic route.¹⁰⁹ However, OFS are defined to include activities regulated by a financial regulator.¹¹⁰ It was observed in the IAMA case that **“anything that may pose a threat to or have an impact on the financial system of the country, can be regulated or prohibited by RBI, despite the said activity not forming part of the credit system or payment system.”** Hence, it is possible to suggest that since crypto assets can be regulated by the RBI which is one of the financial regulators, services in relation to crypto assets fall under the OFS category and that FDI is permitted up to 100% through the automatic route.

B. Other laws applicable to charitable organizations in India

The Foreign Contribution Regulation Act, 2010 (“FCRA”) read with Foreign Contribution Regulation Rules, 2011 (“FCRR”) and Corporate Social Responsibility provisions under Section 135 of Companies Act, 2013 (“CSR”) read with Companies (Corporate Social Responsibility Policy) Rules, 2014 (“CSR Rules”) govern the manner in which charitable organizations in India operate.

i. Foreign Contribution Regulation Act, 2010 (“FCRA”)

FCRA is a non-fiscal statute the core objective to consolidate the law relating to the acceptance and utilization of foreign contribution and to prohibit activities detrimental to national interest. FCRA covers both profit and non-profit entities as well as persons in sensitive government position, political parties and persons associated with news media.

Section 7 of the FCRA prohibits every person from transferring foreign contribution received by it to any other person. Foreign contribution is defined to mean any donation, delivery or transfer made by a foreign source of any article, currency (whether Indian or foreign) or any security. Thus, the definition of contribution is very wide both in terms of coverage and mode of transfer of the assets in question. It brings within its ambit not only money but every asset transferred from a foreign source to an Indian non-profit entity. Even the definition of ‘foreign source’ is given a very wide import under the FCRA.

In the context of crypto assets, it will have to be analyzed whether not for profits receiving crypto donations will be considered as ‘foreign contribution’. Given that foreign contribution means donation of any article, currency or security, it is unlikely that crypto donations come under its ambit.

ii. Corporate Social Responsibility

The CSR provisions apply to Indian companies provided their annual turnover exceeds the prescribed threshold.¹¹¹ Companies whose turnover exceeds the prescribe threshold must spend at least 2% of their average net profits made during the three immediately preceding financial years on CSR activities and/or report the reason for spending or non-expenditure.

109. Serial no. F.10 of the Table provided under Item 3(b) under Schedule I read with Rule 6(a) of the NDI Rules.

110. Serial no. F.10.1(a) of the Table provided under Item 3(b) under Schedule I of the NDI Rules: **“Other Financial Services shall mean financial services activities regulated by financial sector regulators, viz., Reserve Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Pension Fund Regulatory and Development Authority, National Housing Bank or any other financial sector regulator as may be notified by the Government of India.”**

111. Section 135, Companies Act, (2013)

4.Regulatory and Tax Framework for Crypto Assets in India

CSR has been defined to mean and include projects and programs relating to activities specified in Schedule VII.¹¹²

iii. Taxation Framework for Non Profit recipients of Crypto Assets in India

The ITA governs taxation issues concerning public trusts and charitable institutions in India. It is mandatory for all voluntary organizations, whether it is a trust, society or company, to be registered under Section 12AA of the ITA to avail the benefits prescribed under Section 11 and 12 respectively. Section 11 and 12 provides for the manner in which the income of a charitable organization from property / contribution will be taxable. The table below summaries the manner of taxation of charitable organization registered under section 12AA of the ITA:

Category of income	Income subject to tax	Taxability
Donations/voluntary contributions	Voluntary contributions with a specific direction to form part of corpus of trust or institution	Exempt
	Voluntary contribution without such specific direction	Forms part of income from property held under trust
Anonymous donations i.e., donations where donee does not maintain record of identity/any particulars of the donor	Donation exceeding higher of: i) 5% of total donations received by trust or ii) Rs 1,00,000	Taxed at 30%
	Anonymous donation received by trust established wholly for religious and charitable purpose on	Taxable in the same manner as voluntary contributions (without specific direction) as above

112. Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

- 1(i) Eradicating hunger, poverty and malnutrition, 2[“promoting health care including preventive health care”] and sanitation 4[including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.
 - (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
 - (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
 - (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water 4[including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga].
 - (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;
 - (vi) measures for the benefit of armed forces veterans, war widows and their dependents, 9[Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows];
 - (vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports
 - (viii) contribution to the prime minister’s national relief fund 8[or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
 - 10[(ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and (b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).]
 - (x) rural development projects]
 - 3[(xi) slum area development.
- Explanation.- For the purposes of this item, the term ‘slum area’ shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]
- 5[(xii) disaster management, including relief, rehabilitation and reconstruction activities.]

4. Regulatory and Tax Framework for Crypto Assets in India

Category of income	Income subject to tax	Taxability
Income from property held under trust for charitable or religious purpose	Income applied for charitable or religious purpose in India	Exempt
	Income accumulated or set aside for the application towards charitable or religious purpose in India	Exempt to the extent of 15% of such income. This means at-least 85% of income from property to be applied for charitable and religious purpose in India as above and balance 15% can be accumulated or set aside.
Income from property held under trust created for charitable purpose which tends to promote international welfare in which India is interested	CBDT either by general or special order has directed that such income shall not be included in the total income of trust	Exempt
Capital gain from asset held under trust in whole	Net consideration is utilised fully for acquiring another capital asset	Entire capital gain is deemed to have been applied for charitable and religious purpose and hence is exempt
	Net consideration is utilised partially for acquiring another capital asset	Capital gain utilised in excess of cost of old asset transferred is considered to have been applied for charitable and religious purpose and is exempt

There are also restrictions with respect to the manner in which non-profits may invest into securities or hold securities that are donated to the charity.¹¹³ The classification of crypto as an asset or a security could have implications in this regard. Pursuant to the proposed Finance Bill amendments, it will have to be analyzed whether registered non-profits receiving donations in VDAs will be liable to pay gift tax or they will be able to obtain deductions as per the provisions of the ITA.

Further, registered non-profits in India are also under an obligation to spend 85% of the donations they receive in a year towards charitable purposes.¹¹⁴ Valuation issues and convertibility of crypto into cash for meeting the expense test may also create practical challenges.

¹¹³ Section 11, 12 and 13 of the Income Tax Act, 1961

¹¹⁴ Section 11 of the Income Tax Act, 1961

5. Global Best Practices in Enabling Crypto Use for Social Finance

India has a complex legal and regulatory system wherein there is no enabling framework for crypto assets. In fact, the current legal regulatory framework is very negative and discourages use of crypto assets. As discussed above, social finance as a sector (and crypto assets) has flourished in few countries like UK due to policy initiatives and clarity provided by the government.

Few countries have clarified treatment of crypto assets from tax and regulatory perspective providing certain clarity to stakeholders envisaging and encouraging the use crypto assets in their business or for social impact.¹¹⁵

- **United States:** Crypto currency is not considered as a legal tender in the USA. Cryptocurrency exchanges are legal in the United States and fall under the regulatory scope of the Bank Secrecy Act. Cryptocurrency exchange service providers must obtain the requisite license from Financial Crimes Enforcement Network (“FinCEN”), implement an anti-money laundering and sanctions program, maintain appropriate records, and submit reports to the authorities. The FinCEN considers cryptocurrency exchanges to be money transmitters on the basis that cryptocurrency tokens are “other value that substitutes for currency.”¹¹⁶

The Internal Revenue Services (“IRS”) issued guidance providing that virtual currency is treated as property for U.S. federal tax purposes, hence, donations in crypto assets are tax deductible.¹¹⁷ It also issued guidance to remind taxpayers that income from virtual currency transactions is reportable on their income tax returns.¹¹⁸ Further, the Internal Revenue Code introduced section 501 which provides exemption from federal income tax on certain corporations and trusts registered therein.

Apart from that, general regulatory and tax clarity also enable making of payments or investments into social enterprises using crypto. Some example of countries taking the lead on setting out clear legal and tax frameworks is set out below:

- **Singapore:** Crypto currency is not considered as a legal tender in the Singapore. The Monetary Authority of Singapore has clarified that crypto exchanges offering the trading of cryptocurrencies are regulated as digital payment token service providers under the Payment Services Act. As for securities tokens, they are subject to the same securities laws as traditional securities. Hence, an exchange that enables trading in securities tokens is regulated under the Securities and Futures Act and subject to the same rules, especially on fair, orderly and transparent trading, as any securities exchange.¹¹⁹

The Inland Revenue Authority of Singapore (“IRAS”) has also issued guidance on tax treatment of digital tokens.¹²⁰ The IRAS has clarified that businesses which accept digital tokens as remuneration are subject to normal income-tax rules. They will be taxed on the income derived from or received in Singapore and tax deductions will be allowed, wherever permissible, under Singapore tax laws. Whether gains from the disposal

115. Please note that this section has been drafted basis information available in public domain. NDA is licensed to practice only Indian law

116. <https://complyadvantage.com/knowledgebase/crypto-regulations/cryptocurrency-regulations-united-states/>

117. <https://www.irs.gov/newsroom/irs-virtual-currency-guidance>

118. <https://www.irs.gov/newsroom/irs-reminds-taxpayers-to-report-virtual-currency-transactions>

119. <https://www.mas.gov.sg/news/parliamentary-replies/2021/reply-to-parliamentary-question-on-crypto-asset-market>

120. https://www.iras.gov.sg/media/docs/default-source/e-tax/etaxguide_cit_income-tax-treatment-of-digital-tokens.pdf?sfvrsn=8003d133_0

5. Global Best Practices in Enabling Crypto Use for Social Finance

of digital tokens are trading or capital gains depends on the facts and circumstances of each case. Factors such as purpose, frequency of transactions, and holding periods are considered when determining if such gains are taxable.¹²¹

- Canada:** the regulators in Canada have taken a proactive stance towards crypto assets. The Canadian Securities Administrators and the Investment Industry Regulatory Organization of Canada have clarified that crypto trading platforms and dealers in the country must register with provincial regulators. Furthermore, Canada classifies crypto investment firms as money service businesses (MSBs) and requires that they register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). From a taxation standpoint, Canada treats cryptocurrency similar to other commodities.¹²²
- United Kingdom:**¹²³ The UK regulates some types of crypto currencies. In general, the structure and substantive characteristics of a virtual currency will determine whether or not it falls within the UK regulatory perimeter, and if so, which regulatory framework or frameworks will apply. In its Guidance on Cryptoassets, the UK Financial Conduct Authority (FCA) identifies three broad categories of virtual currencies, being – security tokens, e-money tokens and unregulated tokens.

There is no specific UK tax legislation applicable to crypto assets, although two HMRC Policy Papers (in respect of individuals and businesses respectively) set out HMRC's view of the treatment based on normal principles. Origination of assets through crypto asset mining may amount to either trading income or miscellaneous income. If mining does amount to a trade, tokens will be treated as trade receipts. If mining does not amount to a trade, any tokens awarded will be treated as taxable miscellaneous income with appropriate expenses reducing the amount chargeable. Where crypto assets are held as personal investments, holders will be liable to pay capital gains tax upon disposal. The ordinary rules concerning disposals, allowable costs and pooling apply. For corporation tax purposes, HMRC does not consider any crypto assets to be money or currency. They are therefore not subject to, for example, the foreign currency rules.

Supplies in the course of a trade priced in crypto assets will be liable to VAT in the normal way as for supplies in any other currency. Income received from crypto asset mining will generally be outside the scope of VAT on the basis that the activity does not constitute an economic activity for VAT purposes. Income received by miners for other activities (e.g., the provision of verification services) will generally be exempt from VAT as falling within the category of transactions concerning payments, etc.

- Australia:**¹²⁴ Australia has generally been regarded as a relatively friendly and stable jurisdiction for blockchain and cryptocurrency businesses to operate in. Currently, Australian law does not equate digital currency with fiat currency and does not treat cryptocurrency as “money”. Australia's primary financial regulator, the Australian Securities and Investments Commission (ASIC), does not regulate ‘ICOs’ in principle, but digital assets could be regulated as ‘financial products’ or financial services’ under Australia's existing financial services regulatory regime. To date, there has not yet been a regulated financial product ICO in Australia.

Digital currency transactions are no longer subject to goods and services taxes (GST) but remain subject to incomes and capital gains taxes.

121. <https://www.iras.gov.sg/taxes/corporate-income-tax/income-deductions-for-companies/taxable-non-taxable-income>

122. <https://www.coinfirm.com/blog/canada-crypto-regulations/>

123. <https://thelawreviews.co.uk/title/the-virtual-currency-regulation-review/united-kingdom>

124. <https://www.perkinscoie.com/en/news-insights/digital-currencies-international-actions-and-regulations.html>

5. Global Best Practices in Enabling Crypto Use for Social Finance

Country	AML/CFT	Taxation	Consumers: Advice or Warning	Intermediaries: Licensing or Registration	Financial Sector Warning or Bans	Bans on Issuance or Use
Australia	-	Clarified tax treatment	Consumer Warning	Plans on introducing new regulations	-	-
Canada	Amendment to existing regulations	Clarified tax treatment	Consumer Warning	-	-	-
China	-	-	-	-	Ban	-
France	Applying existing regulations	Clarified tax treatment	Consumer Warning	-	-	-
Japan	Plans on introducing new regulations	-	Consumer Warning	Plans on introducing new regulations	-	-
Singapore	Plans on introducing new regulations	Clarified tax treatment	Consumer Warning	-	-	-
South Africa	-	-	-	Plans on introducing new regulations	-	-
UK	Applying existing regulations	Clarified tax treatment	-	-	-	-

6. Some Key Challenges in Adopting Global Use Cases of Crypto Assets in Indian Social Finance Space

Basis review of the use cases of crypto assets in social finance, we are of the view that due to regulatory issues Indian (profit / non for profit) entities or individuals may not be able to receive donations directly in form of crypto. In our experience working with several stakeholders in the non-profits space, the appetite for regulatory risk of any form is extremely low. Without Government support or clarifications from the Government, it is unlikely that the sector will adopt such use cases despite great potential for it in terms of efficiency and cost savings.

Few key challenges from a regulatory and tax perspective which are currently do not allow stakeholders to leverage crypto assets in the social finance space are as follows:

- The Foreign Contribution Regulation Act, 2010 (“FCRA”) does not permit for-profit entities to receive foreign contributions. In this regard, in case donations are made in crypto assets, it is unclear whether the provisions of FCRA will be triggered;
- Position under FEMA with respect to cross border transfers of crypto assets by for profit entities is also unclear.
- Social venture funds established under the SEBI (Alternative Investment Funds) Regulations, 2012 may not be able to accept grants in the form of crypto assets;
- It is unclear whether Indian entities (both for-profit and non-profit) can raise funds through ICOs;
- Accounting treatment of crypto assets requires clarification in terms of categorization.
- Receipt of crypto assets by an Indian for-profit entity may result in GST exposure since to qualify for export of services zero rating, the payment needs to be in convertible foreign exchange.
- Tax treatment of acceptance of grants in crypto assets and further deployment of such grants is unclear. The not for profits can be at risk of losing their tax-exempt status or paying tax on the full grant amount.
- The Indian tax law provides certain deductions for donations made by businesses. It is unclear whether donations made in crypto assets will also be eligible for such deductions
- Valuation is crucial since the value of crypto fluctuates and is different across various exchanges and geographies depending on supply and demand. Therefore, arriving at a value for legal purposes is critical.

We have enumerated the benefits and advantages which remain to unfold from the use of crypto assets in the social finance space. Therefore, while technologies are evolving, regulatory innovation in the social finance space is the need of the hour.


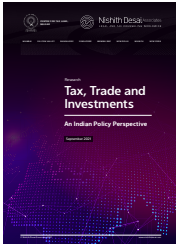
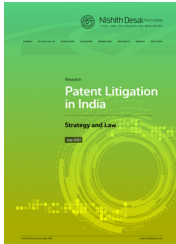
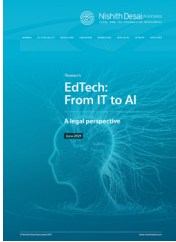




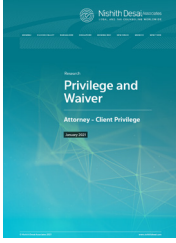
7. Recommendations

A positive and supportive regulatory environment can help the industry evolve. This is even more crucial in the post COVID-19 scenario. Basis our commercial experience, parties are very risk averse – they stand to benefit the most from cost savings from using technology. To enable the section of society that works towards maximising impact for those who need help the most, Government support is required in terms of setting up a favourable legal framework.

In light of the above, we make the following recommendations:

- The appropriate regulators should consult the industry on the challenges faced by them in implementing innovative solutions.
- A combined view both from a regulatory and tax perspective should be considered before providing any guidance.
- Regulators should provide detailed guidance to ensure that there is enough clarity and comfort especially for the non-profit stakeholders.

The following research papers and much more are available on our Knowledge Site: www.nishithdesai.com

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Amazon V. Future – Indian Supreme Court Recognizes Emergency Awards Under the A&C Act	Dispute Resolution	August 2021
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Our dedication to research has been instrumental in creating thought leadership in various areas of law and public policy. Through research, we develop intellectual capital and leverage it actively for both our clients and the development of our associates. We use research to discover new thinking, approaches, skills and reflections on jurisprudence, and ultimately deliver superior value to our clients. Over time, we have embedded a culture and built processes of learning through research that give us a robust edge in providing best quality advices and services to our clients, to our fraternity and to the community at large.

Every member of the firm is required to participate in research activities. The seeds of research are typically sown in hour-long continuing education sessions conducted every day as the first thing in the morning. Free interactions in these sessions help associates identify new legal, regulatory, technological and business trends that require intellectual investigation from the legal and tax perspectives. Then, one or few associates take up an emerging trend or issue under the guidance of seniors and put it through our "Anticipate-Prepare-Deliver" research model.

As the first step, they would conduct a capsule research, which involves a quick analysis of readily available secondary data. Often such basic research provides valuable insights and creates broader understanding of the issue for the involved associates, who in turn would disseminate it to other associates through tacit and explicit knowledge exchange processes. For us, knowledge sharing is as important an attribute as knowledge acquisition.

When the issue requires further investigation, we develop an extensive research paper. Often we collect our own primary data when we feel the issue demands going deep to the root or when we find gaps in secondary data. In some cases, we have even taken up multi-year research projects to investigate every aspect of the topic and build unparalleled mastery. Our TMT practice, IP practice, Pharma & Healthcare/Med-Tech and Medical Device, practice and energy sector practice have emerged from such projects. Research in essence graduates to Knowledge, and finally to **Intellectual Property**.

Over the years, we have produced some outstanding research papers, articles, webinars and talks. Almost on daily basis, we analyze and offer our perspective on latest legal developments through our regular "Hotlines", which go out to our clients and fraternity. These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our Lab Reports dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research articles and disseminate them through our website. Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with much needed comparative research for rule making. Our discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged. Although we invest heavily in terms of time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

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